



## **AGENDA**

**July 5, 2023  
7:00 p.m.**

### **PLANNING COMMISSION SPECIAL MEETING**

**Location:** In person & via Zoom

**Zoom Link:** <https://us02web.zoom.us/j/89133285391> **Passcode:** 21727

#### **1. CALL TO ORDER**

#### **2. OPENING**

#### **3. REVIEW AND APPROVAL OF MINUTES**

A. Meeting of June 27, 2023 (to be approved at the regularly scheduled meeting on 7/31/2023)

#### **4. PUBLIC COMMENT**

#### **5. REVIEW AND CONSIDERATION OF SPECIAL MEETING AGENDA ITEMS**

##### **A. OLD BUSINESS**

##### **B. NEW BUSINESS**

##### **1 . Floodplain Management Ordinance**

Recommend approval of Ordinance 2023-08, proposed amendment to §17.42-Floodplain Management of the Town Code, to the Mayor & Board of Commissioners for consideration.

#### **6. ADJOURNMENT**



**MEMO**

**July 5, 2023**

**DATE:** June 29, 2023

**TO:** Town of Emmitsburg Planning Commission  
Mark Long | Chair

**FROM:** Najila Ahsan | Town Planner  
Cathy Willets | Town Manager

**RE:** **Proposed Text Amendment to Floodplain Management Ordinance**

A zoning text amendment to Town Code §17.42 Floodplain Management is being requested. The amendment, if passed, would adopt the floodplain management measures that comply with the requirements outlined in 44 Code of Federal Regulations (CFR) Section 60.3(d) of the National Flood Insurance Program (NFIP) regulations.

The Town's floodplain management measures must meet or exceed the minimum NFIP requirements, as enclosed, by August 1, 2023, to prevent the suspension of our participation in the NFIP. The consequences of suspension are severe: the community would become ineligible for flood insurance through the NFIP, preventing the sale of new insurance policies and the renewal of existing ones.

This measure holds significant implications for residents as well. Property owners seeking federal financial assistance for construction or acquisition of buildings in Special Flood Hazard Areas (SFHAs), under the Flood Disaster Protection Act of 1973, are required to purchase flood insurance. The availability of flood insurance is tied to the Town's adoption and implementation of the necessary floodplain management measures.

Furthermore, the community's eligibility for federal funding for disaster relief in the event of a natural disaster is contingent upon its participation in the NFIP. Failure to adopt or submit the required floodplain management measures would result in the suspension of the Town from the NFIP program, rendering the Town ineligible for crucial federal funding.

Enacting this measure will protect Emmitsburg from the devastating impacts of flooding but also secure access to federal assistance, including federally guaranteed mortgages, direct loans, disaster relief loans and grants, and other forms of aid provided by FEMA and other agencies.

**TIMELINE**

The following table presents the review period timeline for the above referenced amendment.

<b>PLAN REVIEW PERIOD</b>	<b>DATES</b>
Final reminder from FEMA received	06/26/2023
Staff Review with assistance from NFIP State Coordinator	06/28/2023
Planning Commission Recommendation	07/05/2023
Board of Commissioners Approval (Pending)	07/10/2023
Deadline to adopt floodplain management measures	08/01/2023

**AGENCY REVIEWS**

The following agencies were notified on June 28, 2023, that proposed text amendment is available for review.

<b>AGENCY</b>	<b>SUBMISSION OF COMMENTS</b>
Town Planning Department	06/29/2023

**TOWN CODE REQUIREMENT**

**Town Code §17.44.030 – Approval of board of commissioners and review by planning commission required.**

- A. No (zoning) amendment shall be considered or acted upon by the Board of Commissioners unless it is first submitted to the Planning Commission for review and consideration. The Planning Commission recommendations shall be reported within thirty (30) days of receipt of the proposed amendment. If comments are not submitted within the thirty-day period, the Board of Commissioners may proceed with the review process.

**SUGGESTED MOTION**

Move to recommend approval of proposed Ordinance 23-08. Please state comment(s) for the record.

**§ 59.24**

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and then selected from this register for ratemaking studies on the basis of the following considerations—

(a) Recommendations of State officials;

(b) Location of community and urgency of need for flood insurance;

(c) Population of community and intensity of existing or proposed development of the flood plain, the mudslide (i.e., mudflow) and the flood-related erosion area;

(d) Availability of information on the community with respect to its flood, mudslide (i.e., mudflow) and flood-related erosion characteristics and previous losses;

(e) Extent of State and local progress in flood plain, mudslide (i.e., mudflow) area and flood-related erosion area management, including adoption of flood plain management regulations consistent with related ongoing programs in the area.

[41 FR 46968, Oct. 26, 1976. Redesignated at 44 FR 31177, May 31, 1979]

**§ 59.24 Suspension of community eligibility.**

(a) A community eligible for the sale of flood insurance shall be subject to suspension from the Program for failing to submit copies of adequate flood plain management regulations meeting the minimum requirements of paragraphs (b), (c), (d), (e) or (f) of § 60.3 or paragraph (b) of § 60.4 or § 60.5, within six months from the date the Federal Insurance Administrator provides the data upon which the flood plain regulations for the applicable paragraph shall be based. Where there has not been any submission by the community, the Federal Insurance Administrator shall notify the community that 90 days remain in the six month period in order to submit adequate flood plain management regulations. Where there has been an inadequate submission, the Federal Insurance Administrator shall notify the community of the specific deficiencies in its submitted flood plain management regulations and inform the community of the amount of time remaining within the six month period. If, subsequently, copies of adequate flood plain management regulations are not received by the Federal Insurance Administrator, no later than 30

days before the expiration of the original six month period the Federal Insurance Administrator shall provide written notice to the community and to the state and assure publication in the FEDERAL REGISTER under part 64 of this subchapter of the community's loss of eligibility for the sale of flood insurance, such suspension to become effective upon the expiration of the six month period. Should the community remedy the defect and the Federal Insurance Administrator receive copies of adequate flood plain management regulations within the notice period, the suspension notice shall be rescinded by the Federal Insurance Administrator. If the Federal Insurance Administrator receives notice from the State that it has enacted adequate flood plain management regulations for the community within the notice period, the suspension notice shall be rescinded by the Federal Insurance Administrator. The community's eligibility shall remain terminated after suspension until copies of adequate flood plain management regulations have been received and approved by the Federal Insurance Administrator.

(b) A community eligible for the sale of flood insurance which fails to adequately enforce flood plain management regulations meeting the minimum requirements set forth in §§ 60.3, 60.4 and/or 60.5 shall be subject to probation. Probation shall represent formal notification to the community that the Federal Insurance Administrator regards the community's flood plain management program as not compliant with NFIP criteria. Prior to imposing probation, the Federal Insurance Administrator (1) shall inform the community upon 90 days prior written notice of the impending probation and of the specific program deficiencies and violations relative to the failure to enforce, (2) shall, at least 60 days before probation is to begin, issue a press release to local media explaining the reasons for and the effects of probation, and (3) shall, at least 90 days before probation is to begin, advise all policyholders in the community of the impending probation and the additional premium that will be charged, as provided in this paragraph, on policies sold or renewed during the period of

probation. During this 90-day period the community shall have the opportunity to avoid probation by demonstrating compliance with Program requirements, or by correcting Program deficiencies and remedying all violations to the maximum extent possible. If, at the end of the 90-day period, the Federal Insurance Administrator determines that the community has failed to do so, the probation shall go into effect. Probation may be continued for up to one year after the community corrects all Program deficiencies and remedies all violations to the maximum extent possible. Flood insurance may be sold or renewed in the community while it is on probation. Where a policy covers property located in a community placed on probation on or after October 1, 1986, but prior to October 1, 1992, an additional premium of \$25.00 shall be charged on each such policy newly issued or renewed during the one-year period beginning on the date the community is placed on probation and during any successive one-year periods that begin prior to October 1, 1992. Where a community's probation begins on or after October 1, 1992, the additional premium described in the preceding sentence shall be \$50.00, which shall also be charged during any successive one-year periods during which the community remains on probation for any part thereof. This \$50.00 additional premium shall further be charged during any successive one-year periods that begin on or after October 1, 1992, where the preceding one-year probation period began prior to October 1, 1992.

(c) A community eligible for the sale of flood insurance which fails to adequately enforce its flood plain management regulations meeting the minimum requirements set forth in §§ 60.3, 60.4 and/or 60.5 and does not correct its Program deficiencies and remedy all violations to the maximum extent possible in accordance with compliance deadlines established during a period of probation shall be subject to suspension of its Program eligibility. Under such circumstances, the Federal Insurance Administrator shall grant the community 30 days in which to show cause why it should not be suspended. The Federal Insurance Administrator

may conduct a hearing, written or oral, before commencing suspensive action. If a community is to be suspended, the Federal Insurance Administrator shall inform it upon 30 days prior written notice and upon publication in the FEDERAL REGISTER under part 64 of this subchapter of its loss of eligibility for the sale of flood insurance. In the event of impending suspension, the Federal Insurance Administrator shall issue a press release to the local media explaining the reasons and effects of the suspension. The community's eligibility shall only be reinstated by the Federal Insurance Administrator upon his receipt of a local legislative or executive measure reaffirming the community's formal intent to adequately enforce the flood plain management requirements of this subpart, together with evidence of action taken by the community to correct Program deficiencies and remedy to the maximum extent possible those violations which caused the suspension. In certain cases, the Federal Insurance Administrator, in order to evaluate the community's performance under the terms of its submission, may withhold reinstatement for a period not to exceed one year from the date of his receipt of the satisfactory submission or place the community on probation as provided for in paragraph (b) of this section.

(d) A community eligible for the sale of flood insurance which repeals its flood plain management regulations, allows its regulations to lapse, or amends its regulations so that they no longer meet the minimum requirements set forth in §§ 60.3, 60.4 and/or 60.5 shall be suspended from the Program. If a community is to be suspended, the Federal Insurance Administrator shall inform it upon 30 days prior written notice and upon publication in the FEDERAL REGISTER under part 64 of this subchapter of its loss of eligibility for the sale of flood insurance. The community eligibility shall remain terminated after suspension until copies of adequate flood plain management regulations have been received and approved by the Federal Insurance Administrator.

(e) A community eligible for the sale of flood insurance may withdraw from

the Program by submitting to the Federal Insurance Administrator a copy of a legislative action that explicitly states its desire to withdraw from the National Flood Insurance Program. Upon receipt of a certified copy of a final legislative action, the Federal Insurance Administrator shall withdraw the community from the Program and publish in the FEDERAL REGISTER under part 64 of this subchapter its loss of eligibility for the sale of flood insurance. A community that has withdrawn from the Program may be reinstated if it submits the application materials specified in § 59.22(a).

(f) If during a period of ineligibility under paragraphs (a), (d), or (e) of this section, a community has permitted actions to take place that have aggravated existing flood plain, mudslide (i.e., mudflow) and/or flood related erosion hazards, the Federal Insurance Administrator may withhold reinstatement until the community submits evidence that it has taken action to remedy to the maximum extent possible the increased hazards. The Federal Insurance Administrator may also place the reinstated community on probation as provided for in paragraph (b) of this section.

(g) The Federal Insurance Administrator shall promptly notify the servicing company and any insurers issuing flood insurance pursuant to an arrangement with the Federal Insurance Administrator of those communities whose eligibility has been suspended or which have withdrawn from the program. Flood insurance shall not be sold or renewed in those communities. Policies sold or renewed within a community during a period of ineligibility are deemed to be voidable by the Federal Insurance Administrator whether or not the parties to sale or renewal had actual notice of the ineligibility.

[41 FR 46968, Oct. 26, 1976. Redesignated at 44 FR 31177, May 31, 1979, and amended at 48 FR 44543 and 44552, Sept. 29, 1983; 49 FR 4751, Feb. 8, 1984; 50 FR 36023, Sept. 4, 1985; 57 FR 19540, May 7, 1992; 59 FR 53598, Oct. 25, 1994; 62 FR 55715, Oct. 27, 1997]

## PART 60—CRITERIA FOR LAND MANAGEMENT AND USE

### Subpart A—Requirements for Flood Plain Management Regulations

#### Sec.

- 60.1 Purpose of subpart.
- 60.2 Minimum compliance with flood plain management criteria.
- 60.3 Flood plain management criteria for flood-prone areas.
- 60.4 Flood plain management criteria for mudslide (i.e., mudflow)-prone areas.
- 60.5 Flood plain management criteria for flood-related erosion-prone areas.
- 60.6 Variances and exceptions.
- 60.7 Revisions of criteria for flood plain management regulations.
- 60.8 Definitions.

### Subpart B—Requirements for State Flood Plain Management Regulations

- 60.11 Purpose of this subpart.
- 60.12 Flood plain management criteria for State-owned properties in special hazard areas.
- 60.13 Noncompliance.

### Subpart C—Additional Considerations in Managing Flood-Prone, Mudslide (i.e., Mudflow)-Prone, and Flood-Related Erosion-Prone Areas

- 60.21 Purpose of this subpart.
- 60.22 Planning considerations for flood-prone areas.
- 60.23 Planning considerations for mudslide (i.e., mudflow)-prone areas.
- 60.24 Planning considerations for flood-related erosion-prone areas.
- 60.25 Designation, duties, and responsibilities of State Coordinating Agencies.
- 60.26 Local coordination.

**AUTHORITY:** 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127 of Mar. 31, 1979, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

**SOURCE:** 41 FR 46975, Oct. 26, 1976, unless otherwise noted. Redesignated at 44 FR 31177, May 31, 1979.

### Subpart A—Requirements for Flood Plain Management Regulations

#### § 60.1 Purpose of subpart.

(a) The Act provides that flood insurance shall not be sold or renewed under

the program within a community, unless the community has adopted adequate flood plain management regulations consistent with Federal criteria. Responsibility for establishing such criteria is delegated to the Federal Insurance Administrator.

(b) This subpart sets forth the criteria developed in accordance with the Act by which the Federal Insurance Administrator will determine the adequacy of a community's flood plain management regulations. These regulations must be legally-enforceable, applied uniformly throughout the community to all privately and publicly owned land within flood-prone, mudslide (i.e., mudflow) or flood-related erosion areas, and the community must provide that the regulations take precedence over any less restrictive conflicting local laws, ordinances or codes. Except as otherwise provided in §60.6, the adequacy of such regulations shall be determined on the basis of the standards set forth in §60.3 for flood-prone areas, §60.4 for mudslide areas and §60.5 for flood-related erosion areas.

(c) Nothing in this subpart shall be construed as modifying or replacing the general requirement that all eligible communities must take into account flood, mudslide (i.e., mudflow) and flood-related erosion hazards, to the extent that they are known, in all official actions relating to land management and use.

(d) The criteria set forth in this subpart are minimum standards for the adoption of flood plain management regulations by flood-prone, mudslide (i.e., mudflow)-prone and flood-related erosion-prone communities. Any community may exceed the minimum criteria under this part by adopting more comprehensive flood plain management regulations utilizing the standards such as contained in subpart C of this part. In some instances, community officials may have access to information or knowledge of conditions that require, particularly for human safety, higher standards than the minimum criteria set forth in subpart A of this part. Therefore, any flood plain management regulations adopted by a State or a community which are more restrictive than the criteria set forth

in this part are encouraged and shall take precedence.

[41 FR 46975, Oct. 26, 1976. Redesignated at 44 FR 31177, May 31, 1979, as amended at 48 FR 44552, Sept. 29, 1983; 49 FR 4751, Feb. 8, 1984]

**§ 60.2 Minimum compliance with flood plain management criteria.**

(a) A flood-prone community applying for flood insurance eligibility shall meet the standards of §60.3(a) in order to become eligible if a FHBM has not been issued for the community at the time of application. Thereafter, the community will be given a period of six months from the date the Federal Insurance Administrator provides the data set forth in §60.3 (b), (c), (d), (e) or (f), in which to meet the requirements of the applicable paragraph. If a community has received a FHBM, but has not yet applied for Program eligibility, the community shall apply for eligibility directly under the standards set forth in §60.3(b). Thereafter, the community will be given a period of six months from the date the Federal Insurance Administrator provides the data set forth in §60.3 (c), (d), (e) or (f) in which to meet the requirements of the applicable paragraph.

(b) A mudslide (i.e., mudflow)-prone community applying for flood insurance eligibility shall meet the standards of §60.4(a) to become eligible. Thereafter, the community will be given a period of six months from the date the mudslide (i.e., mudflow) areas having special mudslide hazards are delineated in which to meet the requirements of §60.4(b).

(c) A flood-related erosion-prone community applying for flood insurance eligibility shall meet the standards of §60.5(a) to become eligible. Thereafter, the community will be given a period of six months from the date the flood-related erosion areas having special erosion hazards are delineated in which to meet the requirements of §60.5(b).

(d) Communities identified in part 65 of this subchapter as containing more than one type of hazard (e.g., any combination of special flood, mudslide (i.e., mudflow), and flood-related erosion hazard areas) shall adopt flood plain management regulations for each type

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of hazard consistent with the requirements of §§ 60.3, 60.4 and 60.5.

(e) Local flood plain management regulations may be submitted to the State Coordinating Agency designated pursuant to § 60.25 for its advice and concurrence. The submission to the State shall clearly describe proposed enforcement procedures.

(f) The community official responsible for submitting annual or biennial reports to the Federal Insurance Administrator pursuant to § 59.22(b)(2) of this subchapter shall also submit copies of each annual or biennial report to any State Coordinating Agency.

(g) A community shall assure that its comprehensive plan is consistent with the flood plain management objectives of this part.

(h) The community shall adopt and enforce flood plain management regulations based on data provided by the Federal Insurance Administrator. Without prior approval of the Federal Insurance Administrator, the community shall not adopt and enforce flood plain management regulations based upon modified data reflecting natural or man-made physical changes.

[41 FR 46975, Oct. 26, 1976. Redesignated at 44 FR 31177, May 31, 1979, as amended at 48 FR 29318, June 24, 1983; 48 FR 44552, Sept. 29, 1983; 49 FR 4751, Feb. 8, 1984; 50 FR 36024, Sept. 4, 1985; 59 FR 53598, Oct. 25, 1994; 62 FR 55716, Oct. 27, 1997]

### § 60.3 Flood plain management criteria for flood-prone areas.

The Federal Insurance Administrator will provide the data upon which flood plain management regulations shall be based. If the Federal Insurance Administrator has not provided sufficient data to furnish a basis for these regulations in a particular community, the community shall obtain, review and reasonably utilize data available from other Federal, State or other sources pending receipt of data from the Federal Insurance Administrator. However, when special flood hazard area designations and water surface elevations have been furnished by the Federal Insurance Administrator, they shall apply. The symbols defining such special flood hazard designations are set forth in § 64.3 of this subchapter. In all cases the minimum requirements

governing the adequacy of the flood plain management regulations for flood-prone areas adopted by a particular community depend on the amount of technical data formally provided to the community by the Federal Insurance Administrator. Minimum standards for communities are as follows:

(a) When the Federal Insurance Administrator has not defined the special flood hazard areas within a community, has not provided water surface elevation data, and has not provided sufficient data to identify the floodway or coastal high hazard area, but the community has indicated the presence of such hazards by submitting an application to participate in the Program, the community shall:

(1) Require permits for all proposed construction or other development in the community, including the placement of manufactured homes, so that it may determine whether such construction or other development is proposed within flood-prone areas;

(2) Review proposed development to assure that all necessary permits have been received from those governmental agencies from which approval is required by Federal or State law, including section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334;

(3) Review all permit applications to determine whether proposed building sites will be reasonably safe from flooding. If a proposed building site is in a flood-prone area, all new construction and substantial improvements shall (i) be designed (or modified) and adequately anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy, (ii) be constructed with materials resistant to flood damage, (iii) be constructed by methods and practices that minimize flood damages, and (iv) be constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.



(4) Review subdivision proposals and other proposed new development, including manufactured home parks or subdivisions, to determine whether such proposals will be reasonably safe from flooding. If a subdivision proposal or other proposed new development is in a flood-prone area, any such proposals shall be reviewed to assure that (i) all such proposals are consistent with the need to minimize flood damage within the flood-prone area, (ii) all public utilities and facilities, such as sewer, gas, electrical, and water systems are located and constructed to minimize or eliminate flood damage, and (iii) adequate drainage is provided to reduce exposure to flood hazards;

(5) Require within flood-prone areas new and replacement water supply systems to be designed to minimize or eliminate infiltration of flood waters into the systems; and

(6) Require within flood-prone areas (i) new and replacement sanitary sewage systems to be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters and (ii) onsite waste disposal systems to be located to avoid impairment to them or contamination from them during flooding.

(b) When the Federal Insurance Administrator has designated areas of special flood hazards (A zones) by the publication of a community's FHBM or FIRM, but has neither produced water surface elevation data nor identified a floodway or coastal high hazard area, the community shall:

(1) Require permits for all proposed construction and other developments including the placement of manufactured homes, within Zone A on the community's FHBM or FIRM;

(2) Require the application of the standards in paragraphs (a) (2), (3), (4), (5) and (6) of this section to development within Zone A on the community's FHBM or FIRM;

(3) Require that all new subdivision proposals and other proposed developments (including proposals for manufactured home parks and subdivisions) greater than 50 lots or 5 acres, whichever is the lesser, include within such proposals base flood elevation data;

(4) 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 paragraph (b)(3) of this section, as criteria for requiring that new construction, substantial improvements, or other development in Zone A on the community's FHBM or FIRM meet the standards in paragraphs (c)(2), (c)(3), (c)(5), (c)(6), (c)(12), (c)(14), (d)(2) and (d)(3) of this section;

(5) Where base flood elevation data are utilized, within Zone A on the community's FHBM or FIRM:

(i) Obtain the elevation (in relation to mean sea level) of the lowest floor (including basement) of all new and substantially improved structures, and

(ii) Obtain, if the structure has been floodproofed in accordance with paragraph (c)(3)(ii) of this section, the elevation (in relation to mean sea level) to which the structure was floodproofed, and

(iii) Maintain a record of all such information with the official designated by the community under §59.22 (a)(9)(iii);

(6) Notify, in riverine situations, adjacent communities and the State Coordinating Office prior to any alteration or relocation of a watercourse, and submit copies of such notifications to the Federal Insurance Administrator;

(7) Assure that the flood carrying capacity within the altered or relocated portion of any watercourse is maintained;

(8) Require that all manufactured homes to be placed within Zone A on a community's FHBM or FIRM shall be installed using methods and practices which minimize flood damage. For the purposes of this requirement, 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 anchors. This requirement is in addition to applicable State and local anchoring requirements for resisting wind forces.

(c) When the Federal Insurance Administrator has provided a notice of final flood elevations for one or more

special flood hazard areas on the community's FIRM and, if appropriate, has designated other special flood hazard areas without base flood elevations on the community's FIRM, but has not identified a regulatory floodway or coastal high hazard area, the community shall:

(1) Require the standards of paragraph (b) of this section within all A1-30 zones, AE zones, A zones, AH zones, and AO zones, on the community's FIRM;

(2) Require that all new construction and substantial improvements of residential structures within Zones A1-30, AE and AH zones on the community's FIRM have the lowest floor (including basement) elevated to or above the base flood level, unless the community is granted an exception by the Federal Insurance Administrator for the allowance of basements in accordance with § 60.6 (b) or (c);

(3) Require that all new construction and substantial improvements of non-residential structures within Zones A1-30, AE and AH zones on the community's firm (i) have the lowest floor (including basement) elevated to or above the base flood level or, (ii) together with attendant utility and sanitary facilities, be designed so that below the base flood level the structure 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;

(4) Provide that where a non-residential structure is intended to be made watertight below the base flood level, (i) a registered 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 applicable provisions of paragraph (c)(3)(ii) or (c)(8)(ii) of this section, and (ii) a record of such certificates which includes the specific elevation (in relation to mean sea level) to which such structures are floodproofed shall be maintained with the official designated by the community under § 59.22(a)(9)(iii);

(5) Require, for all new construction and substantial improvements, that 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 shall be 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 registered professional engineer or architect or meet or exceed the following minimum criteria: 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 shall be provided. The bottom of all openings shall be no higher than one foot above grade. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

(6) Require that manufactured homes that are placed or substantially improved within Zones A1-30, AH, and AE on the community's FIRM on sites

(i) Outside of a manufactured home park or subdivision,

(ii) In a new manufactured home park or subdivision,

(iii) In an expansion to an existing manufactured home park or subdivision, or

(iv) In an existing manufactured home park or subdivision on which a manufactured home has incurred "substantial damage" as the result of a flood, be elevated on a permanent foundation such that the lowest floor of the manufactured home is elevated to or above the base flood elevation and be securely anchored to an adequately anchored foundation system to resist floatation collapse and lateral movement.

(7) Require within any AO zone on the community's FIRM that all new construction and substantial improvements of residential structures 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);

(8) Require within any AO zone on the community's FIRM that all new construction and substantial improvements of nonresidential structures (i) 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), or (ii) together with attendant utility and sanitary facilities be completely floodproofed to that level to meet the floodproofing standard specified in § 60.3(c)(3)(ii);

(9) Require within any A99 zones on a community's FIRM the standards of paragraphs (a)(1) through (a)(4)(i) and (b)(5) through (b)(9) of this section;

(10) Require until a regulatory floodway is designated, that no new construction, substantial improvements, or other development (including fill) shall be permitted within Zones A1-30 and AE on the community's FIRM, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community.

(11) Require within Zones AH and AO, adequate drainage paths around structures on slopes, to guide floodwaters around and away from proposed structures.

(12) Require that manufactured homes to be placed or substantially improved on sites in an existing manufactured home park or subdivision within Zones A-1-30, AH, and AE on the community's FIRM that are not subject to the provisions of paragraph (c)(6) of this section be elevated so that either

(i) The lowest floor of the manufactured home is at or above the base flood elevation, or

(ii) 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 be securely anchored to an adequately anchored foundation system to resist floatation, collapse, and lateral movement.

(13) Notwithstanding any other provisions of § 60.3, a community may approve certain development in Zones A1-30, AE, and AH, on the community's FIRM which increase the water surface elevation of the base flood by more than one foot, provided that the community first applies for a conditional FIRM revision, fulfills the requirements for such a revision as established under the provisions of § 65.12, and receives the approval of the Federal Insurance Administrator.

(14) Require that recreational vehicles placed on sites within Zones A1-30, AH, and AE on the community's FIRM either

(i) Be on the site for fewer than 180 consecutive days,

(ii) Be fully licensed and ready for highway use, or

(iii) Meet the permit requirements of paragraph (b)(1) of this section and the elevation and anchoring requirements for "manufactured homes" in paragraph (c)(6) of this section.

A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions.

(d) When the Federal Insurance Administrator has provided a notice of final base flood elevations within Zones A1-30 and/or AE on the community's FIRM and, if appropriate, has designated AO zones, AH zones, A99 zones, and A zones on the community's FIRM, and has provided data from which the community shall designate its regulatory floodway, the community shall:

(1) Meet the requirements of paragraphs (c) (1) through (14) of this section;

(2) Select and adopt a regulatory floodway based on the principle that the area chosen for the regulatory floodway must be designed to carry the waters of the base flood, without increasing the water surface elevation of that flood more than one foot at any point;

(3) Prohibit encroachments, including fill, new construction, substantial improvements, and other development within the adopted regulatory

floodway unless it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed encroachment would not result in any increase in flood levels within the community during the occurrence of the base flood discharge;

(4) Notwithstanding any other provisions of § 60.3, a community may permit encroachments within the adopted regulatory floodway that would result in an increase in base flood elevations, provided that the community first applies for a conditional FIRM and floodway revision, fulfills the requirements for such revisions as established under the provisions of § 65.12, and receives the approval of the Federal Insurance Administrator.

(e) When the Federal Insurance Administrator has provided a notice of final base flood elevations within Zones A1–30 and/or AE on the community's FIRM and, if appropriate, has designated AH zones, AO zones, A99 zones, and A zones on the community's FIRM, and has identified on the community's FIRM coastal high hazard areas by designating Zones V1–30, VE, and/or V, the community shall:

(1) Meet the requirements of paragraphs (c)(1) through (14) of this section;

(2) Within Zones V1–30, VE, and V on a community's FIRM, (i) obtain the elevation (in relation to mean sea level) of the bottom of the lowest structural member of the lowest floor (excluding pilings and columns) of all new and substantially improved structures, and whether or not such structures contain a basement, and (ii) maintain a record of all such information with the official designated by the community under § 59.22(a)(9)(iii);

(3) Provide that all new construction within Zones V1–30, VE, and V on the community's FIRM is located landward of the reach of mean high tide;

(4) Provide that all new construction and substantial improvements in Zones V1–30 and VE, and also Zone V if base flood elevation data is available, on the community's FIRM, are elevated on pilings and columns so that (i) the bottom of the lowest horizontal structural member of the lowest floor (excluding

the pilings or columns) is elevated to or above the base flood level; and (ii) the pile or column foundation and structure attached thereto is anchored to resist flotation, collapse and lateral movement due to the effects of wind and water loads acting simultaneously on all building components. Water loading values used shall be those associated with the base flood. Wind loading values used shall be those required by applicable State or local building standards. A registered professional engineer or architect shall develop or review the structural design, specifications and plans for the construction, and shall certify that the design and methods of construction to be used are in accordance with accepted standards of practice for meeting the provisions of paragraphs (e)(4) (i) and (ii) of this section.

(5) Provide that all new construction and substantial improvements within Zones V1–30, VE, and V on the community's FIRM have the space below the lowest floor either free of obstruction or constructed with non-supporting breakaway walls, open wood lattice-work, or insect screening intended to collapse under wind and water loads without causing collapse, displacement, or other structural damage to the elevated portion of the building or supporting foundation system. For the purposes of this section, a breakaway wall shall have a design safe loading resistance of not less than 10 and no more than 20 pounds per square foot. Use of breakaway walls which exceed a design safe loading resistance of 20 pounds per square foot (either by design or when so required by local or State codes) may be permitted only if a registered professional engineer or architect certifies that the designs proposed meet the following conditions:

(i) Breakaway wall collapse shall result from a water load less than that which would occur during the base flood; and,

(ii) The elevated portion of the building and supporting foundation system shall not be subject to collapse, displacement, or other structural damage due to the effects of wind and water loads acting simultaneously on all building components (structural and non-structural). Water loading values

used shall be those associated with the base flood. Wind loading values used shall be those required by applicable State or local building standards.

Such enclosed space shall be useable solely for parking of vehicles, building access, or storage.

(6) Prohibit the use of fill for structural support of buildings within Zones V1-30, VE, and V on the community's FIRM;

(7) Prohibit man-made alteration of sand dunes and mangrove stands within Zones V1-30, VE, and V on the community's FIRM which would increase potential flood damage.

(8) Require that manufactured homes placed or substantially improved within Zones V1-30, V, and VE on the community's FIRM on sites

(i) Outside of a manufactured home park or subdivision,

(ii) In a new manufactured home park or subdivision,

(iii) In an expansion to an existing manufactured home park or subdivision, or

(iv) In an existing manufactured home park or subdivision on which a manufactured home has incurred "substantial damage" as the result of a flood, meet the standards of paragraphs (e)(2) through (7) of this section and that manufactured homes placed or substantially improved on other sites in an existing manufactured home park or subdivision within Zones VI-30, V, and VE on the community's FIRM meet the requirements of paragraph (c)(12) of this section.

(9) Require that recreational vehicles placed on sites within Zones V1-30, V, and VE on the community's FIRM either

(i) Be on the site for fewer than 180 consecutive days,

(ii) Be fully licensed and ready for highway use, or

(iii) Meet the requirements in paragraphs (b)(1) and (e) (2) through (7) of this section.

A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions.

(f) When the Federal Insurance Administrator has provided a notice of

final base flood elevations within Zones A1-30 or AE on the community's FIRM, and, if appropriate, has designated AH zones, AO zones, A99 zones, and A zones on the community's FIRM, and has identified flood protection restoration areas by designating Zones AR, AR/A1-30, AR/AE, AR/AH, AR/AO, or AR/A, the community shall:

(1) Meet the requirements of paragraphs (c)(1) through (14) and (d)(1) through (4) of this section.

(2) Adopt the official map or legal description of those areas within Zones AR, AR/A1-30, AR/AE, AR/AH, AR/A, or AR/AO that are designated developed areas as defined in §59.1 in accordance with the eligibility procedures under §65.14.

(3) For all new construction of structures in areas within Zone AR that are designated as developed areas and in other areas within Zone AR where the AR flood depth is 5 feet or less:

(i) Determine the lower of either the AR base flood elevation or the elevation that is 3 feet above highest adjacent grade; and

(ii) Using this elevation, require the standards of paragraphs (c)(1) through (14) of this section.

(4) For all new construction of structures in those areas within Zone AR that are not designated as developed areas where the AR flood depth is greater than 5 feet:

(i) Determine the AR base flood elevation; and

(ii) Using that elevation require the standards of paragraphs (c)(1) through (14) of this section.

(5) For all new construction of structures in areas within Zone AR/A1-30, AR/AE, AR/AH, AR/AO, and AR/A:

(i) Determine the applicable elevation for Zone AR from paragraphs (a)(3) and (4) of this section;

(ii) Determine the base flood elevation or flood depth for the underlying A1-30, AE, AH, AO and A Zone; and

(iii) Using the higher elevation from paragraphs (a)(5)(i) and (ii) of this section require the standards of paragraphs (c)(1) through (14) of this section.

(6) For all substantial improvements to existing construction within Zones

AR/A1-30, AR/AE, AR/AH, AR/AO, and AR/A:

(i) Determine the A1-30 or AE, AH, AO, or A Zone base flood elevation; and

(ii) Using this elevation apply the requirements of paragraphs (c)(1) through (14) of this section.

(7) Notify the permit applicant that the area has been designated as an AR, AR/A1-30, AR/AE, AR/AH, AR/AO, or AR/A Zone and whether the structure will be elevated or protected to or above the AR base flood elevation.

[41 FR 46975, Oct. 26, 1976]

EDITORIAL NOTE: FOR FEDERAL REGISTER citations affecting § 60.3, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at [www.govinfo.gov](http://www.govinfo.gov).

**§ 60.4 Flood plain management criteria for mudslide (i.e., mudflow)-prone areas.**

The Federal Insurance Administrator will provide the data upon which flood plain management regulations shall be based. If the Federal Insurance Administrator has not provided sufficient data to furnish a basis for these regulations in a particular community, the community shall obtain, review, and reasonably utilize data available from other Federal, State or other sources pending receipt of data from the Federal Insurance Administrator. However, when special mudslide (i.e., mudflow) hazard area designations have been furnished by the Federal Insurance Administrator, they shall apply. The symbols defining such special mudslide (i.e., mudflow) hazard designations are set forth in § 64.3 of this subchapter. In all cases, the minimum requirements for mudslide (i.e., mudflow)-prone areas adopted by a particular community depend on the amount of technical data provided to the community by the Federal Insurance Administrator. Minimum standards for communities are as follows:

(a) When the Federal Insurance Administrator has not yet identified any area within the community as an area having special mudslide (i.e., mudflow) hazards, but the community has indicated the presence of such hazards by submitting an application to participate in the Program, the community shall

(1) Require permits for all proposed construction or other development in the community so that it may determine whether development is proposed within mudslide (i.e., mudflow)-prone areas;

(2) Require review of each permit application to determine whether the proposed site and improvements will be reasonably safe from mudslides (i.e., mudflows). Factors to be considered in making such a determination should include but not be limited to (i) the type and quality of soils, (ii) any evidence of ground water or surface water problems, (iii) the depth and quality of any fill, (iv) the overall slope of the site, and (v) the weight that any proposed structure will impose on the slope;

(3) Require, if a proposed site and improvements are in a location that may have mudslide (i.e., mudflow) hazards, that (i) a site investigation and further review be made by persons qualified in geology and soils engineering, (ii) the proposed grading, excavations, new construction, and substantial improvements are adequately designed and protected against mudslide (i.e., mudflow) damages, (iii) the proposed grading, excavations, new construction and substantial improvements do not aggravate the existing hazard by creating either on-site or off-site disturbances, and (iv) drainage, planting, watering, and maintenance be such as not to endanger slope stability.

(b) When the Federal Insurance Administrator has delineated Zone M on the community's FIRM, the community shall:

(1) Meet the requirements of paragraph (a) of this section; and

(2) Adopt and enforce a grading ordinance or regulation in accordance with data supplied by the Federal Insurance Administrator which (i) regulates the location of foundation systems and utility systems of new construction and substantial improvements, (ii) regulates the location, drainage and maintenance of all excavations, cuts and fills and planted slopes, (iii) provides special requirements for protective measures including but not necessarily limited to retaining walls, buttress fills, sub-drains, diverter terraces,

AN ORDINANCE TO AMEND  
TITLE 17  
OF THE CODE OF EMMITSBURG  
ENTITLED  
ZONING

\*\*\*\*\*

**BE IT RESOLVED, ENACTED AND ORDAINED** by the Mayor and Board of Commissioners of the Town of Emmitsburg, Maryland, pursuant to the authority granted to them by the laws of Maryland and the Charter of the Town of Emmitsburg, that Title 17, Zoning, of the Emmitsburg Municipal Code, be amended as follows:

New language is indicated by being in **BOLD, CAPITAL LETTERS**, and deleted language is designated by being in [~~brackets and strike out~~].

Chapter 17.42 – Floodplain Management

§17.42.010 – General provisions.

*{A-D unchanged}*

E. Basis for Establishing Special Flood Hazard Areas and BFEs.

1. For the purposes of these regulations, the minimum basis for establishing special flood hazard areas and base flood elevations is the Flood Insurance Study for Frederick County, Maryland and Incorporated Areas dated [~~September 19, 2007,~~] **AUGUST 1, 2023**, or the most recent revision thereof, and the accompanying flood insurance rate map(s) and all subsequent amendments and revisions to the FIRMs. The FIS and FIRMs are retained on file and available to the public at the town office.

*{2 & 3 unchanged}*

*{F through I unchanged}*

§17.42.020 – Definitions.

Unless specifically defined below, words or phrases used in these regulations shall be interpreted to have the meaning they have in common usage and to give these regulations the most reasonable application.

*{“Accessory structure” through “Development” unchanged}*

"Elevation certificate": FEMA form on which surveyed elevations and other data pertinent to a property and a building are identified and which shall be completed by a licensed professional land surveyor or a licensed professional engineer, as specified by the floodplain administrator. When used to document the height above grade of buildings in special flood hazard areas for which base flood elevation data are not available, the elevation certificate shall be completed in accordance with the instructions issued by FEMA. [Note: FEMA Form 086-0-33 and instructions are available online at:

[~~http://www.fema.gov/library/viewRecord.do?id=1383.~~] **HTTPS://WWW.FEMA.GOV/MEDIA-LIBRARY/ASSETS/DOCUMENTS/160**]

*{“Enclosure below the lowest floor” through “Floodproofing” or “floodproofed” unchanged}*

"Floodproofing certificate": FEMA form that is to be completed, signed and sealed by a licensed professional engineer or licensed architect to certify that the design of floodproofing and proposed methods of construction are in accordance with the applicable requirements of Section 17.42.050 E.2.

[Note: FEMA Form 086-0-34 is available online at:

~~[<http://www.fema.gov/library/viewRecord.do?id=1600>.]~~ **HTTPS://WWW.FEMA.GOV/MEDIA-LIBRARY/ASSETS/DOCUMENTS/2748.**]

{*"Floodway" through "Highest adjacent grade" unchanged*}

"Historic structure": Any structure that is:

- A. {*unchanged*}
- 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; **OR**
- C. Individually listed on the Maryland ~~[Inventory of Historic Properties maintained by the Maryland Historical Trust]~~ **REGISTER OF HISTORIC PLACES.** [~~;-or~~]

~~[If the town is a certified local government with the National Park Service:~~

- ~~D. Individually listed on the inventory of historic places maintained by the town whose historic preservation program has been certified by the Maryland Historical Trust or the Secretary of the Interior.]~~

[*"Hydrologic and hydraulic engineering analyses" through "Waters of the state" unchanged*]

§17.42.030 – Administration.

{*A-D unchanged*}

- E. Application Required. Application for a permit shall be made by the owner of the property or the owner's authorized agent (herein referred to as the applicant) prior to the start of any work. The application shall be on a form furnished for that purpose.
  - 1. Application Contents. At a minimum, applications shall include:
    - {*a. – i. unchanged*}
    - j. For accessory structures that are three hundred (300) square feet or larger in area (footprint), **BUT NO LARGER THAN 600 SQUARE FEET IN AREA (FOOTPRINT)**, and that are below the base flood elevation, a variance is required as set forth in Section 17.42.070. If a variance is granted, a signed declaration of land restriction (non-conversion agreement) shall be recorded on the property deed prior to issuance of the certificate of occupancy.

{*k. – o. unchanged*}

{*2. unchanged*}

- F. Review of Application. The floodplain administrator shall:

{*1. unchanged*}



2. Notify applicants that permits from MDE and the U.S. Army Corps of Engineers, and other ~~[STATE]~~ **STATE** and federal authorities may be required.

*{G-H unchanged}*

§17.42.040 – Requirements in all flood hazard areas.

*{A-C unchanged}*

- D. Buildings and Structures. New buildings and structures (including the placement and replacement of manufactured homes) and substantial improvement of existing structures (including manufactured homes) that are located, in whole or in part, in any special flood hazard area shall:

*{1-4 unchanged}*

~~[5. As an alternative to subsection D., electrical systems, equipment and components, and heating, ventilating, air conditioning, and plumbing appliances, plumbing fixtures, duct systems, and other service equipment are permitted to be located below the elevation of the lowest floor provided they are designed and installed to prevent water from entering or accumulating within the components and to resist hydrostatic and hydrodynamic loads and stresses, including the effects of buoyancy, during the occurrence of flooding to that elevation.]~~

[6] 5. Have the electric panel board elevated at least three feet above the BFE.

[7] 6. Comply with the specific requirements of Section 17.42.050.

[8] 7. Comply with the requirements of the most restrictive designation if located on a site that has more than one flood zone designation (A zone, designated floodway).

*{E-L unchanged}*

§17.42.050 – Requirements in flood hazard areas.

*{A & B unchanged}*

- C. Development that Affects Flood-Carrying Capacity of Nontidal Waters of the State.

*{1 through 4 unchanged}*

5. Alteration of a Watercourse. For any proposed development that involves alteration of a watercourse not subject to subsection C., unless waived by MDE, the applicant shall develop hydrologic and hydraulic engineering analyses and technical data reflecting such changes, including the floodway analysis required in Section 17.42.030 E., and submit such technical data to the floodplain administrator and to FEMA. The analyses shall be prepared by a licensed professional engineer in a format required by MDE and by FEMA for a conditional letter of map revision ~~[or]~~ **AND A letter of map revision UPON COMPLETION OF THE PROJECT.** Submittal requirements and fees shall be the responsibility of the applicant.

Alteration of a watercourse may be permitted only upon submission, by the applicant, of the following:

*{a. through d. unchanged}*

D. Residential Structures and Residential Portions of [~~Mixed-Use~~] **MIXED-USE** Structures. New residential structures and residential portions of [~~mixed-use~~] **MIXED-USE** structures, and substantial improvement (including repair of substantial damage) of existing residential structures and residential portions of [~~mixed-use~~] **MIXED-USE** structures shall comply with the applicable requirements of Section 17.42.040 and this section. See subsection F. for requirements for horizontal additions.

1. Elevation Requirements.

*{a through c unchanged}*

**d. BASEMENT FLOORS THAT ARE BELOW GRADE ON ALL SIDES ARE PROHIBITED.**

*{2 & 3 unchanged}*

4. Enclosures Below the Lowest Floor.

*{a. & b. unchanged}*

c. Enclosures below the lowest floor shall be provided with flood openings which shall meet the following criteria: [Note: See NFIP Technical Bulletin #1, "**REQUIREMENTS FOR** Openings in Foundation Walls and Walls of Enclosures [~~Below Elevated Buildings~~]." **[HTTPS://WWW.FEMA.GOV/SITES/DEFAULT/FILES/2020-07/FEMA\\_TB1\\_OPENINGS\\_FOUNDATION\\_WALLS\\_WALLS\\_OF\\_ENCLOSURES\\_031320.PDF](https://www.fema.gov/sites/default/files/2020-07/fema_tbi_openings_foundation_walls_walls_of_enclosures_031320.pdf)**]

*{i. through v. unchanged}*

E. Nonresidential Structures and Nonresidential Portions of [~~Mixed-Use~~] **MIXED-USE** Structures. New nonresidential structures and nonresidential portions of [~~mixed-use~~] **MIXED-USE** structures, and substantial improvement (including repair of substantial damage) of existing nonresidential structures and nonresidential portions of [~~mixed-use~~] **MIXED-USE** structures shall comply with the applicable requirements of Section 17.42.040 and the requirements of this section. See subsection F. for requirements for horizontal additions.

1. Elevation Requirements. Elevated structures shall:

*{a. through d. unchanged}*

**E. BASEMENT FLOORS THAT ARE BELOW GRADE ON ALL SIDES ARE PROHIBITED.**

*{2. unchanged}*

*{F & G unchanged}*

§17.42.060 – Reserved. *{unchanged}*

§17.42.070 – Variances.

A. General. The board of appeals shall have the power to consider and authorize or deny variances from the strict application of the requirements of these regulations. A variance shall be approved only if it is determined to not be contrary to the public interest and where, owing to special

conditions of the lot or parcel, a literal enforcement of the provisions of these regulations, an unnecessary hardship would result.

Upon consideration of the purposes of these regulations, the individual circumstances, and the considerations and limitations of this section, the board of appeals may attach such conditions to variances as it deems necessary to further the purposes of these regulations.

**NO VARIANCE SHALL BE GRANTED FOR AN ACCESSORY STRUCTURE EXCEEDING 600 SQUARE FEET. A SIGNED DECLARATION OF LAND RESTRICTION (NON-CONVERSION AGREEMENT) IS REQUIRED AS A CONDITION OF RECEIVING THE VARIANCE. THE AGREEMENT MUST BE RECORDED WITH THE DEED. IF A VARIANCE IS GRANTED AND THE ACCESSORY STRUCTURE IS NOT ELEVATED OR DRY FLOOD PROOFED, THE CONDITIONS IN SECTION 17.42.050 G APPLY.**

The board of appeals shall notify, in writing, any applicant to whom a variance is granted to construct or substantially improve a building or structure with its lowest floor below the elevation required by these regulations that the variance is to the floodplain management requirements of these regulations only, and that the cost of federal flood insurance will be commensurate with the increased risk, with rates up to twenty-five dollars (\$25.00) per one hundred dollars (\$100.00) of insurance coverage.

A record of all variance actions, including justification for issuance shall be maintained pursuant to Section 17.42.030 B.

*{B through & D unchanged}*

§17.42.080 – Enforcement *{unchanged}*

§17.42.090 – Subsequent amendments and effective date *{unchanged}*

**BE IT FURTHER RESOLVED, ENACTED AND ORDAINED** that this Ordinance shall take effect on the date on which the Mayor approves the Ordinance after passing by the Board of Commissioners or on the date on which the Board of Commissioners passes the Ordinance over the veto of the Mayor.

**PASSED** this \_\_\_ day of \_\_\_\_\_, 2023 by a vote of

<b>Commissioners:</b>	<b>For</b>	<b>Against</b>	<b>Absent</b>	<b>Abstain</b>
O'Donnell				
Sweeney				
Ritz III				
Burns				
Davis				
<b>TOTAL:</b>				

ATTEST:

BOARD OF COMMISSIONERS:

\_\_\_\_\_  
Sabrina King, Town Clerk

\_\_\_\_\_  
Timothy J. O'Donnell, President

**MAYOR**

\_\_\_\_\_ APPROVED \_\_\_\_\_ VETOED

this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

\_\_\_\_\_  
Donald N. Briggs, Mayor

I hereby certify that the foregoing Ordinance has been posted as required by Chapter 2.04 of the Emmitsburg Municipal Code.

Sabrina King, Town Clerk  
Date:

## Chapter 17.42 FLOODPLAIN MANAGEMENT

### 17.42.010 General provisions.

- A. Findings. The Federal Emergency Management Agency has identified special flood hazard areas within the boundaries of the town. Special flood hazard areas are subject to periodic inundation which may result in 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. Structures that are inadequately elevated, improperly floodproofed, or otherwise unprotected from flood damage also contribute to flood losses.

The town, by resolution, agreed to meet the requirements of the National Flood Insurance Program and was accepted for participation in the program on September 17, 1980. As of that date, or as of September 17, 1980, the initial effective date of the town flood insurance rate map, all development and new construction as defined herein, are to be compliant with these regulations.

- B. Statutory Authorization. The Maryland General Assembly, in Md. Code Ann., Land Use Article, Title 4, has established as policy of the state that the orderly development and use of land and structures requires comprehensive regulation through the implementation of planning and zoning control, and that planning and zoning controls shall be implemented by local government in order to, among other purposes, secure the public safety, promote health and general welfare, and promote the conservation of natural resources. Therefore, the board of commissioners of the town does hereby adopt the following floodplain management regulations.
- C. Statement of Purpose. It is the purpose of these regulations to promote the public health, safety and general welfare, and to:
1. Protect human life, health and welfare;
  2. Encourage the utilization of appropriate construction practices in order to prevent or minimize flood damage in the future;
  3. Minimize flooding of water supply and sanitary sewage disposal systems;
  4. Maintain natural drainage;
  5. Reduce financial burdens imposed on the community, its governmental units and its residents, by discouraging unwise design and construction of development in areas subject to flooding;
  6. Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
  7. Minimize prolonged business interruptions;
  8. Minimize damage to public facilities and other utilities such as water and gas mains, electric, telephone and sewer lines, streets and bridges;
  9. Reinforce that those who build in and occupy special flood hazard areas should assume responsibility for their actions;
  10. Minimize the impact of development on adjacent properties within and near flood-prone areas;
  11. Provide that the flood storage and conveyance functions of floodplains are maintained;

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12. Minimize the impact of development on the natural and beneficial functions of floodplains;
  13. Prevent floodplain uses that are either hazardous or environmentally incompatible; and
  14. Meet community participation requirements of the National Flood Insurance Program as set forth in the Code of Federal Regulations (CFR) at 44 CFR Section 59.22.
- D. Areas to Which These Regulations Apply. These regulations shall apply to all special flood hazard areas within the jurisdiction of the town, and identified in subsection E.
- E. Basis for Establishing Special Flood Hazard Areas and BFEs.
1. For the purposes of these regulations, the minimum basis for establishing special flood hazard areas and base flood elevations is the Flood Insurance Study for Frederick County, Maryland and Incorporated Areas dated August 1, 2023, or the most recent revision thereof, and the accompanying flood insurance rate map(s) and all subsequent amendments and revisions to the FIRMs. The FIS and FIRMs are retained on file and available to the public at the town office.
  2. Where field surveyed topography or digital topography indicates that ground elevations are below the closest applicable base flood elevation, even in areas not delineated as a special flood hazard on the FIRM, the area shall be considered as special flood hazard area.
  3. To establish base flood elevations in special flood hazard areas that do not have such elevations shown on the FIRM, the floodplain administrator may provide the best available data for base flood elevations, may require the applicant to obtain available information from federal, state or other sources, or may require the applicant to establish special flood hazard areas and base flood elevations as set forth in Section 17.42.030 C., D., and E.
- F. Abrogation and Greater Restrictions. These regulations are not intended to repeal or abrogate any existing regulations and ordinances, including subdivision regulations, zoning ordinances, building codes, or any existing easements, covenants, or deed restrictions. In the event of a conflict between these regulations and any other ordinance, the more restrictive shall govern.
- G. Interpretation.
1. In the interpretation and application of these regulations, all provisions shall be:
  2. Considered as minimum requirements;
  3. Liberally construed in favor of the governing body; and,
  4. Deemed neither to limit nor repeal any other powers granted under State statutes.
    - a. Notes referencing publications of the Federal Emergency Management Agency refer to the most recent edition of those publications, are intended only as guidance, and do not bind or alter the authority of the floodplain administrator to interpret and apply these regulations.
- H. Warning and Disclaimer of Liability. The degree of flood protection required by these regulations is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur, and flood heights may be increased by man-made or natural causes. These regulations do not imply that land outside of the special flood hazard areas or uses that are permitted within such areas will be free from flooding or flood damage.

These regulations shall not create liability on the part of the town, any officer or employee thereof, the Maryland Department of the Environment (MDE) or the Federal Emergency Management Agency (FEMA), for any flood damage that results from reliance on these regulations or any administrative decision lawfully made hereunder.

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- I. Severability. Should any section or provision of these regulations be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the regulations as a whole, or any part thereof other than the part so declared to be unconstitutional or invalid.

(Ord. No. 14-06, 8-18-14)

### **17.42.020 Definitions.**

Unless specifically defined below, words or phrases used in these regulations shall be interpreted to have the meaning they have in common usage and to give these regulations the most reasonable application.

"Accessory structure": A building or structure on the same lot with, and of a nature customarily incidental and subordinate to, the principal structure. For the purposes of these regulations, an accessory structure shall be used solely for parking of vehicles and limited storage.

"Agreement to submit an elevation certificate": A form on which the applicant for a permit to construct a building or structure, to construct certain horizontal additions, to place or replace a manufactured home, to substantially improve a building, structure, or manufactured home, agrees to have an elevation certificate prepared by a licensed professional engineer or licensed professional surveyor, as specified by the floodplain administrator, and to submit the certificate:

- A. Upon placement of the lowest floor and prior to further vertical construction; and
- B. Prior to the final inspection and issuance of the certificate of occupancy.

"Alteration of a watercourse": For the purpose of these regulations, alteration of a watercourse includes, but is not limited to widening, deepening or relocating the channel, including excavation or filling of the channel. Alteration of a watercourse does not include construction of a road, bridge, culvert, dam, or in-stream pond unless the channel is proposed to be realigned or relocated as part of such construction.

"Area of shallow flooding": A designated Zone AO on the flood insurance rate map with a one-percent annual chance or greater 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.

"Base building": The building to which an addition is being added. This term is used in provisions relating to additions.

"Base flood": The flood having a one-percent chance of being equaled or exceeded in any given year; the base flood also is referred to as the one-percent annual chance (100-year) flood.

"Base flood elevation": The water surface elevation of the base flood in relation to the datum specified on the community's flood insurance rate map. In areas of shallow flooding, the base flood elevation is the highest adjacent natural grade elevation plus the depth number specified in feet on the flood insurance rate map, or at least four feet if the depth number is not specified.

"Basement": Any area of the building having its floor subgrade (below ground level) on all sides.

"Building code(s)": The effective Maryland Building Performance Standards (COMAR 05.02.07), including the building code, residential code, and existing building code.

"Community": A political subdivision of the state of Maryland (county, city or town) that has authority to adopt and enforce floodplain management regulations within its jurisdictional boundaries.

"Critical and essential facilities": Buildings and other structures that are intended to remain operational in the event of extreme environmental loading from flood, wind, snow or earthquakes. [Note: See Maryland Building Performance Standards, Sec. 1602 and Table 1604.5.] Critical and essential facilities typically include hospitals, fire

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stations, police stations, storage of critical records, facilities that handle or store hazardous materials, and similar facilities.

"Declaration of land restriction (non-conversion agreement)": A form signed by the owner to agree not to convert or modify in any manner that is inconsistent with the terms of the permit and these regulations, certain enclosures below the lowest floor of elevated buildings and certain accessory structures. The form requires the owner to record it on the property deed to inform future owners of the restrictions.

"Development": Any manmade change to improved or unimproved real estate, including but not limited to buildings or other structures, placement of manufactured homes, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.

"Elevation certificate": FEMA form on which surveyed elevations and other data pertinent to a property and a building are identified and which shall be completed by a licensed professional land surveyor or a licensed professional engineer, as specified by the floodplain administrator. When used to document the height above grade of buildings in special flood hazard areas for which base flood elevation data are not available, the elevation certificate shall be completed in accordance with the instructions issued by FEMA. [Note: FEMA Form 086-0-33 and instructions are available online at: <https://www.fema.gov/media-library/assets/documents/160>.

"Enclosure below the lowest floor": An unfinished or flood-resistant enclosure that is located below an elevated building, is surrounded by walls on all sides, and is usable solely for parking of vehicles, building access or storage, in an area other than a basement area, provided that such enclosure is built in accordance with the applicable design requirements specified in these regulations. Also see "lowest floor."

"Federal Emergency Management Agency (FEMA)": The federal agency with the overall responsibility for administering the National Flood Insurance Program.

"Flood" or "flooding": A general and temporary condition of partial or complete inundation of normally dry land areas from:

- A. The overflow of inland or tidal waters, and/or
- B. The unusual and rapid accumulation or runoff of surface waters from any source.

"Flood damage-resistant materials": Any construction material that is capable of withstanding direct and prolonged contact with floodwaters without sustaining any damage that requires more than cosmetic repair. [Note: See NFIP Technical Bulletin #2, "Flood Damage-Resistant Materials Requirements."]

"Flood insurance rate map (FIRM)": An official map on which the Federal Emergency Management Agency has delineated special flood hazard areas to indicate the magnitude and nature of flood hazards, to designate applicable flood zones, and to delineate floodways, if applicable. FIRMs that have been prepared in digital format or converted to digital format are referred to as digital FIRMs (DFIRM).

"Flood insurance study (FIS)": The official report in which the Federal Emergency Management Agency has provided flood profiles, floodway information, and the water surface elevations.

"Flood opening": A flood opening (non-engineered) is an opening that is used to meet the prescriptive requirement of one square inch of net open area for every square foot of enclosed area. An engineered flood opening is an opening that is designed and certified by a licensed professional engineer or licensed architect as meeting certain performance characteristics, including providing automatic entry and exit of floodwaters; this certification requirement may be satisfied by an individual certification for a specific structure or issuance of an evaluation report by the ICC Evaluation Service, Inc. [Note: See NFIP Technical Bulletin #1, "Openings in Foundation Walls and Walls of Enclosures."]

"Flood protection elevation": The base flood elevation plus two feet of freeboard. Freeboard is a factor of safety that compensates for uncertainty in factors that could contribute to flood heights greater than the height



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calculated for a selected size flood and floodway conditions, such as wave action, obstructed bridge openings, debris and ice jams, climate change, and the hydrologic effect of urbanization in a watershed.

"Flood protection setback": A distance measured perpendicular to the top of bank of a watercourse that delineates an area to be left undisturbed to minimize future flood damage and to recognize the potential for bank erosion. Along nontidal waters of the state, the flood protection setback is:

- A. One hundred (100) feet, if the watercourse has special flood hazard areas shown on the FIRM, except where the setback extends beyond the boundary of the flood hazard area; or
- B. Fifty (50) feet, if the watercourse does not have special flood hazard areas shown on the FIRM.

"Flood zone": A designation for areas that are shown on flood insurance rate maps:

- A. Zone A: Special flood hazard areas subject to inundation by the one-percent annual chance (100-year) flood; base flood elevations are not determined.
- B. Zone AE and Zone A1-30: Special flood hazard areas subject to inundation by the one-percent annual chance (100-year) flood; base flood elevations are determined; floodways may or may not be determined.
- C. Zone AH and Zone AO: Areas of shallow flooding, with flood depths of one to three feet (usually areas of ponding or sheet flow on sloping terrain), with or without BFEs or designated flood depths.
- D. Zone B and Zone X (shaded): Areas subject to inundation by the two-tenths-percent annual chance (500-year) flood; areas subject to the one-percent annual chance (100-year) flood with average depths of less than one-foot or with contributing drainage area less than one square mile; and areas protected from the base flood by levees.
- E. Zone C and Zone X (unshaded): Areas outside of Zones designated A, AE, A1-30, AO, VE, V1-30, B, and X (shaded).
- F. Zone VE and Zone V1-30: Special flood hazard areas subject to inundation by the one-percent annual chance (100-year) flood and subject to high velocity wave action.

"Floodplain": Any land area susceptible to being inundated by water from any source (see definition of "flood" or "flooding").

"Floodproofing" or "floodproofed": Any combination of structural and nonstructural additions, changes, or adjustments to buildings or structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents, such that the buildings or structures are 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. [Note: State regulations at COMAR 26.17.04.11(B)(7) do not allow new nonresidential buildings in nontidal waters of the state to be floodproofed.]

"Floodproofing certificate": FEMA form that is to be completed, signed and sealed by a licensed professional engineer or licensed architect to certify that the design of floodproofing and proposed methods of construction are in accordance with the applicable requirements of Section 17.42.050 E.2. [Note: FEMA Form 086-0-34 is available online at: <https://www.fema.gov/media-library/assets/documents/2748>.]

"Floodway": The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to pass the base flood discharge such that the cumulative increase in the water surface elevation of the base flood discharge is no more than a designated height. When shown on a FIRM, the floodway is referred to as the "designated floodway."

"Functionally dependent use": A use which cannot perform its intended purpose unless it is located or carried out in close proximity to water; the term includes only docking facilities, port facilities that are necessary

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for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, but does not include long-term storage or related manufacturing facilities.

"Highest adjacent grade": The highest natural elevation of the ground surface, prior to construction, next to the proposed foundation of a structure.

"Historic structure": Any structure that is:

- A. Individually listed in the National Register of Historic Places (a listing maintained by the U.S. Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listings 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; or
- C. Individually listed on the Maryland Register of Historic Places.

"Hydrologic and hydraulic engineering analyses": Analyses performed by a licensed professional engineer, in accordance with standard engineering practices that are accepted by the Maryland Department of the Environment (Nontidal Wetlands and Waterways) and FEMA, used to determine the base flood, other frequency floods, flood elevations, floodway information and boundaries, and flood profiles.

"Letter of map change (LOMC)": A letter of map change is an official FEMA determination, by letter, that amends or revises an effective flood insurance rate map or flood insurance study. Letters of map change include:

"Letter of map amendment (LOMA)": An amendment based on technical data showing that a property was incorrectly included in a designated special flood hazard area. A LOMA amends the current effective flood insurance rate map and establishes that a specific property or structure is not located in a special flood hazard area.

"Letter of map revision (LOMR)": A revision based on technical data that may show changes to flood zones, flood elevations, floodplain and floodway delineations, and planimetric features. A letter of map revision based on fill (LOMR-F), is a determination that a structure or parcel of land has been elevated by fill above the base flood elevation and is, therefore, no longer exposed to flooding associated with the base flood. In order to qualify for this determination, the fill must have been permitted and placed in accordance with the community's floodplain management regulations.

"Conditional letter of map revision (CLOMR)": A formal review and comment as to whether a proposed flood protection project or other project complies with the minimum NFIP requirements for such projects with respect to delineation of special flood hazard areas. A conditional letter of map revision based on fill (CLOMR-F) is a determination that a parcel of land or proposed structure that will be elevated by fill would not be inundated by the base flood if fill is placed on the parcel as proposed or the structure is built as proposed. A CLOMR does not revise the effective flood insurance rate map or flood insurance study; upon submission and approval of certified as-built documentation, a letter of map revision may be issued by FEMA, to revise the effective FIRM.

"Licensed": As used in these regulations, licensed refers to professionals who are authorized to practice in the state by issuance of licenses by the Maryland Board of Architects, Maryland Board of Professional Engineers, Maryland Board of Professional Land Surveyors, and the Maryland Real Estate Appraisers and Home Inspectors Commission.

"Lowest floor": The lowest floor of the lowest enclosed area (including basement) of a building or structure; the floor of an enclosure below the lowest floor is not the lowest floor provided the enclosure is constructed in accordance with these regulations. The lowest floor of a manufactured home is the bottom of the lowest horizontal supporting member (longitudinal chassis frame beam).

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"Manufactured home": A structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. The term manufactured home does not include a recreational vehicle.

"Market value": The price at which a property will change hands between a willing buyer and a willing seller, neither party being under compulsion to buy or sell and both having reasonable knowledge of relevant facts. For the purposes of these regulations, the market value of a building is determined by a licensed real estate appraiser or the most recent, full phased-in assessment value of the building (improvement) determined by the Maryland Department of Assessments and Taxation.

"Maryland Department of the Environment (MDE)": A principal department of the state of Maryland that is charged with, among other responsibilities, the coordination of the National Flood Insurance Program in the state (NFIP state coordinator) and the administration of regulatory programs for development and construction that occur within the waters of the state, including nontidal wetlands, nontidal waters and floodplains, and state and private tidal wetlands (tidal wetlands). Unless otherwise specified, "MDE" refers to the department's wetlands and waterways program.

"Mixed-use structure": Any structure that is used or intended for use for a mixture of nonresidential and residential uses in the same structure.

"National Flood Insurance Program (NFIP)": The program authorized by the U.S. Congress in 42 U.S.C. §§ 4001—4129. The NFIP makes flood insurance coverage available in communities that agree to adopt and enforce minimum regulatory requirements for development in areas prone to flooding (see definition of "special flood hazard area").

"New construction": Structures, including additions and improvements, and the placement of manufactured homes, for which the start of construction commenced on or after September 17, 1980, the initial effective date of the town flood insurance rate map, including any subsequent improvements, alterations, modifications, and additions to such structures.

"NFIP state coordinator": See Maryland Department of the Environment (MDE).

"Nontidal waters of the state": See "waters of the state." As used in these regulations, "nontidal waters of the state" refers to any stream or body of water within the state that is subject to state regulation, including the "100-year frequency floodplain of free-flowing waters." COMAR 26.17.04.01 states that "the landward boundaries of any tidal waters shall be deemed coterminous with the wetlands boundary maps adopted pursuant to Environment Article, § 16-301, Annotated Code of Maryland." Therefore, the boundary between the tidal and nontidal waters of the state is the tidal wetlands boundary.

"Person": An individual or group of individuals, corporation, partnership, association, or any other entity, including state and local governments and agencies.

"Recreational vehicle": A vehicle that is built on a single chassis, four hundred (400) square feet or less when measured at the largest horizontal projection, designed to be self-propelled or permanently towable by a light duty truck, and designed primarily not for use as a permanent dwelling, but as temporary living quarters for recreational, camping, travel, or seasonal use.

"Special flood hazard area (SFHA)": The land in the floodplain subject to a one-percent or greater chance of flooding in any given year. Special flood hazard areas are designated by the Federal Emergency Management Agency in flood insurance studies and on flood insurance rate maps as zones A, AE, AH, AO, A1-30, and A99, and zones VE and V1-30. The term includes areas shown on other flood maps that are identified in Section 17.42.010 E.

"Start of construction": The date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition placement, or other improvement was within one hundred 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

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any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory structures, such as garages or sheds not occupied as dwelling units or not part of the main structure. For substantial improvements, 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.

"Structure": That which is built or constructed; specifically, a walled and roofed building, including a gas or liquid storage tank that is principally above ground, as well as a manufactured home.

"Substantial damage": Damage of any origin sustained by a building or structure whereby the cost of restoring the building or structure to its before damaged condition would equal or exceed fifty (50) percent of the market value of the building or structure before the damage occurred. Also used as "substantially damaged" structures. [Note: See "Substantial Improvement/Substantial Damage Desk Reference" (FEMA P-758).]

"Substantial improvement": Any reconstruction, rehabilitation, addition, or other improvement of a building or structure, the cost of which equals or exceeds fifty (50) percent of the market value of the building or 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 building or 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 prior to submission of an application for a permit and which are the minimum necessary to assure safe living conditions; or
- B. Any alteration of a historic structure, provided that the alteration will not preclude the structure's continued designation as a historic structure.

[Note: See "Substantial Improvement/Substantial Damage Desk Reference" (FEMA P-758).]

"Temporary structure": A structure installed, used, or erected for a period of less than one hundred (180) days.

"Variance": A grant of relief from the strict application of one or more requirements of these regulations.

"Violation": Any construction or development in a special flood hazard area that is being performed without an issued permit. The failure of a building, structure, or other development for which a permit is issued to be fully compliant with these regulations and the conditions of the issued permit. A building, structure, or other development without the required design certifications, the elevation certificate, or other evidence of compliance required is presumed to be a violation until such time as the required documentation is provided.

"Watercourse": The channel, including channel banks and bed, of nontidal waters of the state.

"Waters of the state": [See Environment Article, Title 5, Subtitle 1, Annotated Code of Maryland.] Waters of the state include:

- A. Both surface and underground waters within the boundaries of the state subject to its jurisdiction;
- B. That portion of the Atlantic Ocean within the boundaries of the state;
- C. The Chesapeake Bay and its tributaries;
- D. All ponds, lakes, rivers, streams, public ditches, tax ditches, and public drainage systems within the state, other than those designed and used to collect, convey, or dispose of sanitary sewage; and
- E. The floodplain of free-flowing waters determined by MDE on the basis of the 100-year flood frequency.

(Ord. No. 14-06, 8-18-14)

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### **17.42.030 Administration.**

- A. Designation of the Floodplain Administrator. The town manager is hereby appointed to administer and implement these regulations and is referred to herein as the floodplain administrator. The floodplain administrator may:
1. Delegate duties and responsibilities set forth in these regulations to qualified technical personnel, plan examiners, inspectors, and other employees.
  2. Enter into a written agreement or written contract with another Maryland community or private sector entity to administer specific provisions of these regulations. Administration of any part of these regulations by another entity shall not relieve the community of its responsibilities pursuant to the participation requirements of the National Flood Insurance Program as set forth in the Code of Federal Regulations (CFR) at 44 CFR Section 59.22.
- B. Duties and Responsibilities of the Floodplain Administrator. The duties and responsibilities of the floodplain administrator shall include but are not limited to:
1. Review applications for permits to determine whether proposed activities will be located in flood hazard areas.
  2. Interpret floodplain boundaries and provide available base flood elevation and flood hazard information.
  3. Review applications to determine whether proposed activities will be reasonably safe from flooding and require new construction and substantial improvements to meet the requirements of these regulations.
  4. Review applications to determine whether all necessary permits have been obtained from the federal, state or local agencies from which prior or concurrent approval is required; in particular, permits from MDE for any construction, reconstruction, repair, or alteration of a dam, reservoir, or waterway obstruction (including bridges, culverts, structures), any alteration of a watercourse, or any change of the course, current, or cross section of a stream or body of water, including any change to the 100-year frequency floodplain of free-flowing nontidal waters of the state.
  5. Verify that applicants proposing an alteration of a watercourse have notified adjacent communities and MDE (NFIP state coordinator), and have submitted copies of such notifications to FEMA.
  6. Approve applications and issue permits to develop in flood hazard areas if the provisions of these regulations have been met, or disapprove applications if the provisions of these regulations have not been met.
  7. Inspect or cause to be inspected, buildings, structures, and other development for which permits have been issued to determine compliance with these regulations or to determine if non-compliance has occurred or violations have been committed.
  8. Review elevation certificates and require incomplete or deficient certificates to be corrected.
  9. Submit to FEMA, or require applicants to submit to FEMA, data and information necessary to maintain FIRMs, including hydrologic and hydraulic engineering analyses prepared by or for the town, within six (6) months after such data and information becomes available if the analyses indicate changes in base flood elevations or boundaries.
  10. Maintain and permanently keep records that are necessary for the administration of these regulations, including:

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- a. Flood insurance studies, flood insurance rate maps (including historic studies and maps and current effective studies and maps) and letters of map change; and
    - b. Documentation supporting issuance and denial of permits, elevation certificates, documentation of the elevation (in relation to the datum on the FIRM) to which structures have been floodproofed, other required design certifications, variances, and records of enforcement actions taken to correct violations of these regulations.
  11. Enforce the provisions of these regulations, investigate violations, issue notices of violations or stop work orders, and require permit holders to take corrective action.
  12. Advise the board of appeals regarding the intent of these regulations and, for each application for a variance, prepare a staff report and recommendation.
  13. Administer the requirements related to proposed work on existing buildings:
    - a. Make determinations as to whether buildings and structures that are located in flood hazard areas and that are damaged by any cause have been substantially damaged.
    - b. Make reasonable efforts to notify owners of substantially damaged structures of the need to obtain a permit to repair, rehabilitate, or reconstruct, and prohibit the non-compliant repair of substantially damaged buildings except for temporary emergency protective measures necessary to secure a property or stabilize a building or structure to prevent additional damage.
  14. Undertake, as determined appropriate by the floodplain administrator due to the circumstances, other actions which may include but are not limited to: issuing press releases, public service announcements, and other public information materials related to permit requests and repair of damaged structures; coordinating with other federal, state, and local agencies to assist with substantial damage determinations; providing owners of damaged structures information related to the proper repair of damaged structures in special flood hazard areas; and assisting property owners with documentation necessary to file claims for increased cost of compliance (ICC) coverage under NFIP flood insurance policies.
  15. Notify the Federal Emergency Management Agency when the corporate boundaries of the town have been modified and:
    - a. Provide a map that clearly delineates the new corporate boundaries or the new area for which the authority to regulate pursuant to these regulations has either been assumed or relinquished through annexation; and
    - b. If the FIRM for any annexed area includes special flood hazard areas that have flood zones that have regulatory requirements that are not set forth in these regulations, prepare amendments to these regulations to adopt the FIRM and appropriate requirements, and submit the amendments to the governing body for adoption; such adoption shall take place within six months of the date of annexation and a copy of the amended regulations shall be provided to MDE (NFIP state coordinator) and FEMA.
  16. Upon the request of FEMA, complete and submit a report concerning participation in the NFIP which may request information regarding the number of buildings in the SFHA, number of permits issued for development in the SFHA, and number of variances issued for development in the SFHA.
- C. Use and Interpretation of FIRMs. The floodplain administrator shall make interpretations, where needed, as to the exact location of special flood hazard areas, floodplain boundaries, and floodway boundaries. The following shall apply to the use and interpretation of FIRMs and data:
1. Where field surveyed topography indicates that ground elevations:

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- a. Are below the base flood elevation, even in areas not delineated as a special flood hazard area on a FIRM, the area shall be considered as special flood hazard area and subject to the requirements of these regulations;
  - b. Are above the base flood elevation, the area shall be regulated as special flood hazard area unless the applicant obtains a letter of map change that removes the area from the special flood hazard area.
2. In FEMA-identified special flood hazard areas where base flood elevation and floodway data have not been identified and in areas where FEMA has not identified special flood hazard areas, any other flood hazard data available from a federal, state, or other source shall be reviewed and reasonably used.
  3. Base flood elevations and designated floodway boundaries on FIRMs and in FISs shall take precedence over base flood elevations and floodway boundaries by any other sources if such sources show reduced floodway widths and/or lower base flood elevations.
  4. Other sources of data shall be reasonably used if such sources show increased base flood elevations and/or larger floodway areas than are shown on FIRMs and in FISs.
  5. If a preliminary flood insurance rate map and/or a preliminary flood insurance study has been provided by FEMA:
    - a. Upon the issuance of a letter of final determination by FEMA, if the preliminary flood hazard data is more restrictive than the effective data, it shall be used and shall replace the flood hazard data previously provided from FEMA for the purposes of administering these regulations.
    - b. Prior to the issuance of a letter of final determination by FEMA, the use of preliminary flood hazard data shall be deemed the best available data pursuant to Section 17.42.010 E. and used where no base flood elevations and/or floodway areas are provided on the effective FIRM.
    - c. Prior to issuance of a letter of final determination by FEMA, the use of preliminary flood hazard data is permitted where the preliminary base flood elevations, floodplain or floodway boundaries exceed the base flood elevations and/or designated floodway widths in existing flood hazard data provided by FEMA. Such preliminary data may be subject to change and/or appeal to FEMA.
- D. Permits Required and Expiration.
1. It shall be unlawful for any person to begin any development or construction which is wholly within, partially within, or in contact with any flood hazard area established in Section 17.42.010 E., including but not limited to: filling; grading; construction of new structures; the substantial improvement of buildings or structures, including repair of substantial damage; placement or replacement of manufactured homes, including substantial improvement or repair of substantial damage of manufactured homes; erecting or installing a temporary structure, or alteration of a watercourse, until a permit is obtained from the town. No such permit shall be issued until the requirements of these regulations have been met.
  2. In addition to the permits required in subsection A., applicants for permits in nontidal waters of the State are advised to contact MDE. Unless waived by MDE, pursuant to Code of Maryland Regulations 26.17.04, Construction on Nontidal Waters and Floodplains, MDE regulates the "100-year frequency floodplain of free-flowing waters," also referred to as nontidal waters of the State. To determine the 100-year frequency floodplain, hydrologic calculations are based on the ultimate development of the watershed, assuming existing zoning. The resulting flood hazard areas delineated using the results of such calculations may be different than the special flood hazard areas established in Section 17.42.010 E.. A permit from the town is still required in addition to any state requirements.
  3. A permit is valid provided the actual start of work is within one hundred eighty (180) days of the date of permit issuance. Requests for extensions shall be submitted in writing and justifiable cause

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demonstrated. The floodplain administrator may grant, in writing, one or more extensions of time, for additional periods not exceeding ninety (90) days each and provided there has been no amendment or revision to the basis for establishing special flood hazard areas and BFEs set forth in Section 17.42.010 E.

- E. Application Required. Application for a permit shall be made by the owner of the property or the owner's authorized agent (herein referred to as the applicant) prior to the start of any work. The application shall be on a form furnished for that purpose.
1. Application Contents. At a minimum, applications shall include:
    - a. Site plans drawn to scale showing the nature, location, dimensions, and existing and proposed topography of the area in question, and the location of existing and proposed structures, excavation, filling, storage of materials, drainage facilities, and other proposed activities.
    - b. Elevation of the existing natural ground where buildings or structures are proposed, referenced to the datum on the FIRM.
    - c. Delineation of flood hazard areas, designated floodway boundaries, flood zones, base flood elevations, and flood protection setbacks. Base flood elevations shall be used to delineate the boundary of flood hazard areas and such delineations shall prevail over the boundary of SFHAs shown on FIRMs.
    - d. Where floodways are not delineated or base flood elevations are not shown on the FIRMs, the floodplain administrator has the authority to require the applicant to use information provided by the floodplain administrator, information that is available from federal, state, or other sources, or to determine such information using accepted engineering practices or methods approved by the floodplain administrator. [Note: See "Managing Floodplain Development in Approximate Zone A Areas: A Guide for Obtaining and Developing Base (100-Year) Flood Elevations" (FEMA 265).]
    - e. Determination of the base flood elevations, for development proposals and subdivision proposals, each with at least five lots or at least five acres, whichever is the lesser, in special flood hazard areas where base flood elevations are not shown on the FIRM; if hydrologic and hydraulic engineering analyses are submitted, such analyses shall be performed in accordance with the requirements and specifications of MDE and FEMA.
    - f. Hydrologic and hydraulic engineering analyses for proposals in special flood hazard areas where FEMA has provided base flood elevations but has not delineated a floodway; such analyses shall demonstrate that the cumulative effect of proposed development, when combined with all other existing and anticipated development will not increase the water surface elevation of the base flood by more than one foot, or a lower increase if required by MDE.
    - g. For encroachments in floodways, an evaluation of alternatives to such encroachments, including different uses of the site or portion of the site within the floodway, and minimization of such encroachment.
    - h. If fill is proposed to be placed for a purpose other than to elevate structures, the applicant shall indicate the intended purpose for the fill.
    - i. For proposed buildings and structures, including substantial improvement and repair of substantial damage, and placement and replacement of manufactured homes, including substantial improvement and repair of substantial damage:
      - i. The proposed elevation of the lowest floor, including basement, referenced to the datum on the FIRM and a signed agreement to submit an elevation certificate.



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- ii. The signed declaration of land restriction (nonconversion agreement) that shall be recorded on the property deed prior to issuance of the certificate of occupancy, if the application includes an enclosure below the lowest floor or a crawl/underfloor space that is more than four feet in height.
  - iii. A written evaluation of alternative methods considered to elevate structures and manufactured homes, if the location is in nontidal waters of the state and fill is proposed to achieve the elevation required in Section 17.42.050 D. or E.
- j. For accessory structures that are three hundred (300) square feet or larger in area (footprint) but no larger than 600 square feet in area (footprint) and that are below the base flood elevation, a variance is required as set forth in Section 17.42.070. If a variance is granted, a signed declaration of land restriction (non-conversion agreement) shall be recorded on the property deed prior to issuance of the certificate of occupancy.
- k. For temporary structures and temporary storage, specification of the duration of the temporary use.
- l. For proposed work on existing buildings, structure, and manufactured homes, including any improvement, addition, repairs, alterations, rehabilitation, or reconstruction, sufficient information to determine if the work constitutes substantial improvement or repair of substantial damage, including but not limited to:
- i. If the existing building or structure was constructed after September 17, 1980, evidence that the work will not alter any aspect of the building or structure that was required for compliance with the floodplain management requirements in effect at the time the building or structure was permitted.
  - ii. If the proposed work is a horizontal addition, a description of the addition and whether it will be independently supported or structurally connected to the base building and the nature of all other modifications to the base building, if any.
  - iii. Documentation of the market value of the building or structure before the improvement or, if the work is repair of damage, before the damage occurred.
  - iv. Documentation of the actual cash value of all proposed work, including the actual cash value of all work necessary to repair and restore damage to the before-damaged condition, regardless of the amount of work that will be performed. The value of work performed by the owner or volunteers shall be valued at market labor rates; the value of donated or discounted materials shall be valued at market rates.
- m. Certifications and/or technical analyses prepared or conducted by a licensed professional engineer or licensed architect, as appropriate, including:
- i. The determination of the base flood elevations or hydrologic and hydraulic engineering analyses prepared by a licensed professional engineer that are required by the floodplain administrator or are required by these regulations in: Section 17.42.040 B. for certain subdivisions and development; Section 17.42.050 C. for development in designated floodways; Section 17.42.050 C. for development in flood hazard areas with base flood elevations but no designated floodways; and Section 17.42.050 C. for deliberate alteration or relocation of watercourses.
  - ii. The floodproofing certificate for nonresidential structures that are floodproofed as required in Section 17.42.050 E.
  - iii. Certification that engineered flood openings are designed to meet the minimum requirements of Section 17.42.050 E. to automatically equalize hydrostatic flood forces.

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- n. For nonresidential structures that are proposed with floodproofing, an operations and maintenance plan as specified in Section 17.42.050 E.
  - o. Such other material and information as may be requested by the floodplain administrator and necessary to determine conformance with these regulations.
2. New Technical Data.
- a. The applicant may seek a letter of map change by submitting new technical data to FEMA, such as base maps, topography, and engineering analyses to support revision of floodplain and floodway boundaries and/or base flood elevations. Such submissions shall be prepared in a format acceptable to FEMA and any fees shall be the sole responsibility of the applicant. A copy of the submittal shall be attached to the application for a permit.
  - b. If the applicant submits new technical data to support any change in floodplain and designated floodway boundaries and/or base flood elevations but has not sought a letter of map change from FEMA, the applicant shall submit such data to FEMA as soon as practicable, but not later than six months after the date such information becomes available. Such submissions shall be prepared in a format acceptable to FEMA and any fees shall be the sole responsibility of the applicant.
- F. Review of Application. The floodplain administrator shall:
- 1. Review applications for development in special flood hazard areas to determine the completeness of information submitted. The applicant shall be notified of incompleteness or additional information that is required to support the application.
  - 2. Notify applicants that permits from MDE and the U.S. Army Corps of Engineers, and other State and federal authorities may be required.
  - 3. Review all permit applications to assure that all necessary permits have been received from the federal, state or local governmental agencies from which prior approval is required. The applicant shall be responsible for obtaining such permits, including permits issued by:
    - a. The U.S. Army Corps of Engineers under Section 10 of the Rivers and Harbors Act and Section 404 of the Clean Water Act;
    - b. MDE pursuant to COMAR 26.23 (Nontidal Wetlands) and Section 401 of the Clean Water Act;
    - c. MDE for construction on nontidal waters of the State pursuant to COMAR 26.17.04.
  - 4. Review applications for compliance with these regulations after all information required in Section 17.42.030 E. or identified and required by the floodplain administrator has been received.
- G. Inspections.
- 1. The floodplain administrator shall make periodic inspections of development permitted in special flood hazard areas, at appropriate times throughout the period of construction in order to monitor compliance. Such inspections may include:
  - 2. Stake-out inspection, to determine location on the site relative to the flood hazard area and designated floodway.
  - 3. Foundation inspection, upon placement of the lowest floor and prior to further vertical construction, to collect information or certification of the elevation of the lowest floor.
  - 4. Inspection of enclosures below the lowest floor, including crawl/underfloor spaces, to determine compliance with applicable provisions.

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5. Utility inspection, upon installation of specified equipment and appliances, to determine appropriate location with respect to the base flood elevation.
  6. Final inspection prior to issuance of the certificate of occupancy.
- H. Submissions Required Prior to Final Inspection. Pursuant to the agreement to submit an elevation certificate submitted with the application as required in Section 17.42.030 E., the permittee shall have an elevation certificate prepared and submitted prior to final inspection and issuance of a certificate of occupancy for elevated structures and manufactured homes, including new structures and manufactured homes, substantially-improved structures and manufactured homes, and additions to structures and manufactured homes.

(Ord. No. 14-06, 8-18-14)

#### **17.42.040 Requirements in all flood hazard areas.**

- A. Application of Requirements. The general requirements of this section apply to all development proposed within all special flood hazard areas identified in Section 17.42.010 E.
- B. Subdivision Proposals and Development Proposals.
1. In all flood zones:
    - a. Subdivision proposals and development proposals shall be consistent with the need to minimize flood damage and are subject to all applicable standards in these regulations.
    - b. Subdivision proposals and development proposals shall have utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage.
    - c. Subdivision proposals and development proposals shall have adequate drainage paths provided to reduce exposure to flood hazards and to guide floodwaters around and away from proposed structures.
    - d. Subdivision proposals and development proposals containing at least five lots or at least five acres, whichever is the lesser, that are wholly or partially in flood hazard areas where base flood elevation data are not provided by the floodplain administrator or available from other sources, shall be supported by determinations of base flood elevations as required in Section 17.42.030 E.
    - e. Subdivision access roads shall have the driving surface at or above the base flood elevation.
  2. In special flood hazard areas of nontidal waters of the state:
    - a. Subdivision proposals shall be laid out such that proposed building pads are located outside of the special flood hazard area and any portion of platted lots that include land areas that are below the base flood elevation shall be used for other purposes, deed restricted, or otherwise protected to preserve it as open space.
    - b. Subdivision access roads shall have the driving surface at or above the base flood elevation.
- C. Protection of Water Supply and Sanitary Sewage Systems.
1. New and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems.
  2. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters into systems and discharges from systems into floodwaters.
  3. On-site waste disposal systems shall be located to avoid impairment to or contamination from them during conditions of flooding.

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- D. Buildings and Structures. New buildings and structures (including the placement and replacement of manufactured homes) and substantial improvement of existing structures (including manufactured homes) that are located, in whole or in part, in any special flood hazard area shall:
1. Be designed (or modified) and constructed to safely support flood loads. The construction shall provide a complete load path capable of transferring all loads from their point of origin through the load-resisting elements to the foundation. Structures shall be designed, connected and anchored to resist flotation, collapse or permanent lateral movement due to structural loads and stresses, including hydrodynamic and hydrostatic loads and the effects of buoyancy, from flooding equal to the flood protection elevation or the elevation required by these regulations or the building code, whichever is higher.
  2. Be constructed by methods and practices that minimize flood damage.
  3. Use flood damage-resistant materials below the elevation of the lowest floor required in Section 17.42.050 D. or E.
  4. Have electrical systems, equipment and components, and mechanical, heating, ventilating, air conditioning, and plumbing appliances, plumbing fixtures, duct systems, and other service equipment located at or above the elevation of the lowest floor required in Section 17.42.050 D. or E. Electrical wiring systems are permitted to be located below elevation of the lowest floor provided they conform to the provisions of the electrical part of the building code for wet locations. If replaced as part of a substantial improvement, electrical systems, equipment and components, and heating, ventilation, air conditioning, and plumbing appliances, plumbing fixtures, duct systems, and other service equipment shall meet the requirements of this section.
  5. Have the electric panelboard elevated at least three feet above the BFE.
  6. Comply with the specific requirements of Section 17.42.050.
  7. Comply with the requirements of the most restrictive designation if located on a site that has more than one flood zone designation (A zone, designated floodway).
- E. Placement of Fill.
1. Disposal of fill, including but not limited to earthen soils, rock, rubble, construction debris, woody debris, and trash, shall not be permitted in special flood hazard areas.
  2. Fill proposed to be placed to elevate structures in flood hazard areas shall comply with the floodways requirements in Section 17.42.050 A., B., and C. and the limitations of Section 17.42.050 D.
- F. Historic Structures. Repair, alteration, addition, rehabilitation, or other improvement of historic structures shall be subject to the requirements of these regulations if the proposed work is determined to be a substantial improvement, unless a determination is made that the proposed work will not preclude the structure's continued designation as a historic structure. The floodplain administrator may require documentation of a structure's continued eligibility and designation as a historic structure.
- G. Manufactured Homes.
1. New manufactured homes shall not be placed or installed in floodways.
  2. For the purpose of these regulations, the lowest floor of a manufactured home is the bottom of the lowest horizontal supporting member (longitudinal chassis frame beam).
  3. New manufactured homes located outside of floodways, replacement manufactured homes in any flood hazard areas, and substantial improvement (including repair of substantial damage) of existing manufactured homes in all flood hazard area, shall:
    - a. Be elevated on a permanent, reinforced foundation in accordance with Section 17.42.050;

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- b. Be installed in accordance with the anchor and tie-down requirements of the building code or the manufacturer's written installation instructions and specifications; and
  - c. Have enclosures below the lowest floor of the elevated manufactured home, if any, including enclosures that are surrounded by rigid skirting or other material that is attached to the frame or foundation, that comply with the requirements of Section 17.42.050.

[Note: See "Protecting Manufactured Homes from Floods and Other Hazards: A Multi-Hazard Foundation and Installation Guide" (FEMA P-85).]

H. Recreational Vehicles. Recreational vehicles shall:

- 1. Meet the requirements for manufactured homes in subsection G.; or
- 2. Be fully licensed and ready for highway use; or
- 3. Be on a site for less than one hundred eighty (180) consecutive days.

I. Critical and Essential Facilities. Critical and essential facilities shall:

- 1. Not be located in floodways; or
- 2. If located in flood hazard areas other than floodways, be elevated to the higher of elevation required by these regulations plus one-foot, the elevation required by the building code, or the elevation of the two-tenths-percent chance (500-year) flood.

J. Temporary Structures and Temporary Storage. In addition to the application requirements of Section 17.42.030 E., applications for the placement or erection of temporary structures and the temporary storage of any goods, materials, and equipment, shall specify the duration of the temporary use. Temporary structures and temporary storage in floodways shall meet the limitations of Section 17.42.050 C. In addition:

- 1. Temporary structures shall:
  - a. Be designed and constructed to prevent flotation, collapse or lateral movement resulting from hydrodynamic loads and hydrostatic loads during conditions of the base flood;
  - b. Have electric service installed in compliance with the electric code; and
  - c. Comply with all other requirements of the applicable state and local permit authorities.
- 2. Temporary storage shall not include hazardous materials.

K. Gas or Liquid Storage Tanks.

- 1. Underground tanks in flood hazard areas shall be anchored to prevent flotation, collapse or lateral movement resulting from hydrostatic loads, including the effects of buoyancy, during conditions of the base flood.
- 2. Above-ground tanks in flood hazard areas shall be anchored to a supporting structure and elevated to or above the base flood elevation, or shall be anchored or otherwise designed and constructed to prevent flotation, collapse, or lateral movement resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy, during conditions of the base flood.
- 3. In flood hazard areas, tank inlets, fill openings, outlets and vents shall be:
  - a. At or above the base flood elevation or fitted with covers designed to prevent the inflow of floodwater or outflow of the contents of the tanks during conditions of the base flood; and
  - b. Anchored to prevent lateral movement resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy, during conditions of the base flood.

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- L. Functionally Dependent Uses. Applications for functionally dependent uses that do not conform to the requirements of these regulations shall be approved only by variances issued pursuant to Section 17.42.070. If approved, functionally dependent uses shall be protected by methods that minimize flood damage during the base flood, including measures to allow floodwaters to enter and exit, use of flood damage-resistant materials, and elevation of electric service and equipment to the extent practical given the use of the building.

(Ord. No. 14-06, 8-18-14)

### **17.42.050 Requirements in flood hazard areas.**

- A. General Requirements. In addition to the general requirements of Section 17.42.040 the requirements of this section shall:
1. Apply in flood hazard areas, including special flood hazard areas along nontidal waters of the state.
  2. Apply to all development, new construction, substantial improvements (including repair of substantial damage), and placement, replacement, and substantial improvement (including repair of substantial damage) of manufactured homes.
- B. Flood Protection Setbacks. Within areas defined by flood protection setbacks along nontidal waters of the state:
1. No new buildings, structures, or other development shall be permitted unless the applicant demonstrates that the site cannot be developed without such encroachment into the flood protection setback and the encroachment is the minimum necessary after consideration of varying other siting standards such as side, front, and back lot line setbacks.
  2. Disturbance of natural vegetation shall be minimized and any disturbance allowed shall be vegetatively stabilized.
  3. Public works and temporary construction may be permitted.
- C. Development that Affects Flood-Carrying Capacity of Nontidal Waters of the State.
1. Development in Designated Floodways. For proposed development that will encroach into a designated floodway, Section 17.42.030 E. requires the applicant to submit an evaluation of alternatives to such encroachment, including different uses of the site or the portion of the site within the floodway, and minimization of such encroachment. This requirement does not apply to fences that do not block the flow of floodwaters or trap debris.

Proposed development in a designated floodway may be permitted only if:

- a. The applicant has been issued a permit by MDE; and
  - b. The applicant has developed hydrologic and hydraulic engineering analyses and technical data prepared by a licensed professional engineer reflecting such changes, and the analyses, which shall be submitted to the floodplain administrator, demonstrate that the proposed activity will not result in any increase in the base flood elevation; or
  - c. If the analyses demonstrate that the proposed activities will result in an increase in the base flood elevation, the applicant has obtained a conditional letter of map revision and a letter of map revision from FEMA upon completion of the project. Submittal requirements and fees shall be the responsibility of the applicant.
2. Development that Includes the Placement of Fill in Nontidal Waters of the State. For proposed development that includes the placement of fill in nontidal waters of the state, other than

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development that is subject to subsection D., a hydraulically-equivalent volume of excavation is required. Such excavations shall be designed to drain freely.

3. Development in Areas with Base Flood Elevations but No Designated Floodways. For development in special flood hazard areas of nontidal waters of the state with base flood elevations but no designated floodways:
  - a. The applicant shall develop hydrologic and hydraulic engineering analyses and technical data reflecting the proposed activity and shall submit such technical data to the floodplain administrator as required in Section 17.42.030 E. The analyses shall be prepared by a licensed professional engineer in a format required by FEMA for a conditional letter of map revision and a letter of map revision upon completion of the project. Submittal requirements and fees shall be the responsibility of the applicant.
  - b. The proposed development may be permitted if the applicant has received a permit by MDE and if the analyses demonstrate that the cumulative effect of the proposed development, when combined with all other existing and potential flood hazard area encroachments will not increase the base flood elevation more than one (1) foot at any point.
4. Construction of Roads, Bridges, Culverts, Dams and In-Stream Ponds. Construction of roads, bridges, culverts, dams, and in-stream ponds in nontidal waters of the state shall not be approved unless they comply with this section and the applicant has received a permit from MDE.
5. Alteration of a Watercourse. For any proposed development that involves alteration of a watercourse not subject to subsection C., unless waived by MDE, the applicant shall develop hydrologic and hydraulic engineering analyses and technical data reflecting such changes, including the floodway analysis required in Section 17.42.030 E., and submit such technical data to the floodplain administrator and to FEMA. The analyses shall be prepared by a licensed professional engineer in a format required by MDE and by FEMA for a conditional letter of map revision and a letter of map revision upon completion of the project. Submittal requirements and fees shall be the responsibility of the applicant.

Alteration of a watercourse may be permitted only upon submission, by the applicant, of the following:

- a. A description of the extent to which the watercourse will be altered or relocated;
  - b. A certification by a licensed professional engineer that the flood-carrying capacity of the watercourse will not be diminished;
  - c. Evidence that adjacent communities, the U.S. Army Corps of Engineers, and MDE have been notified of the proposal, and evidence that such notifications have been submitted to FEMA; and
  - d. Evidence that the applicant shall be responsible for providing the necessary maintenance for the altered or relocated portion of the watercourse so that the flood carrying capacity will not be diminished. The floodplain administrator may require the applicant to enter into an agreement with the town specifying the maintenance responsibilities; if an agreement is required, the permit shall be conditioned to require that the agreement be recorded on the deed of the property which shall be binding on future owners.
- D. Residential Structures and Residential Portions of Mixed-Use Structures. New residential structures and residential portions of mixed-use structures, and substantial improvement (including repair of substantial damage) of existing residential structures and residential portions of mixed use structures shall comply with the applicable requirements of Section 17.42.040 and this section. See subsection F. for requirements for horizontal additions.
1. Elevation Requirements.

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- a. Lowest floors shall be elevated to or above the flood protection elevation;
  - b. In areas of shallow flooding (Zone AO), the lowest floor (including basement) shall be elevated at least as high above the highest adjacent grade as the depth number specified in feet on the FIRM plus two feet, or at least four feet if a depth number is not specified; and
  - c. Enclosures below the lowest floor shall meet the requirements of subsection C.
  - d. Basement floors that are below grade on all sides are prohibited.
2. Limitations on Use of Fill to Elevate Structures.
  3. Unless otherwise restricted by these regulations, especially by the limitations in subsection C.1., C.2., and C.3., fill placed for the purpose of raising the ground level to support a building or structure shall:
    - a. Consist of earthen soil or rock materials only.
    - b. Extend laterally from the building footprint to provide for adequate access as a function of use; the floodplain administrator may seek advice from the state fire marshal's office and/or the local fire services agency;
    - c. Comply with the requirements of the building code and be placed and compacted to provide for stability under conditions of rising and falling floodwaters and resistance to erosion, scour, and settling;
    - d. Be sloped no steeper than one vertical to two horizontal, unless approved by the floodplain administrator;
    - e. Be protected from erosion associated with expected velocities during the occurrence of the base flood; unless approved by the floodplain administrator, fill slopes shall be protected by vegetation if the expected velocity is less than five feet per second, and by other means if the expected velocity is five feet per second or more; and
    - f. Be designed with provisions for adequate drainage and no adverse effect on adjacent properties.
  4. Enclosures Below the Lowest Floor.
    - a. Enclosures below the lowest floor shall be used solely for parking of vehicles, building access, crawl/underfloor spaces, or limited storage.
    - b. Enclosures below the lowest floor shall be constructed using flood damage-resistant materials.
    - c. Enclosures below the lowest floor shall be provided with flood openings which shall meet the following criteria: [Note: See NFIP Technical Bulletin #1, "Requirements for Openings in Foundation Walls and Walls of Enclosures." [https://www.fema.gov/sites/default/files/2020-07/fema\\_tb1\\_openings\\_foundation\\_walls\\_walls\\_of\\_enclosures\\_031320.pdf](https://www.fema.gov/sites/default/files/2020-07/fema_tb1_openings_foundation_walls_walls_of_enclosures_031320.pdf)]
      - i. There shall be a minimum of two flood openings on different sides of each enclosed area; if a building has more than one enclosure below the lowest floor, each such enclosure shall have flood openings on exterior walls.
      - ii. The total net area of all flood openings shall be at least one square inch for each square foot of enclosed area (non-engineered flood openings), or the flood openings shall be engineered flood openings that are designed and certified by a licensed professional engineer to automatically allow entry and exit of floodwaters; the certification requirement may be satisfied by an individual certification or an evaluation report issued by the ICC Evaluation Service, Inc.
      - iii. The bottom of each flood opening shall be one foot or less above the higher of the interior floor or grade, or the exterior grade, immediately below the opening.



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- iv. Any louvers, screens or other covers for the flood openings shall allow the automatic flow of floodwaters into and out of the enclosed area.
  - v. If installed in doors, flood openings that meet requirements of subsections (A)—(D), are acceptable; however, doors without installed flood openings do not meet the requirements of this section.
- E. Nonresidential Structures and Nonresidential Portions of Mixed-Use Structures. New nonresidential structures and nonresidential portions of mixed-use structures, and substantial improvement (including repair of substantial damage) of existing nonresidential structures and nonresidential portions of mixed-use structures shall comply with the applicable requirements of Section 17.42.040 and the requirements of this section. See subsection F. for requirements for horizontal additions.
- 1. Elevation Requirements. Elevated structures shall:
    - a. Have the lowest floor (including basement) elevated to or above the flood protection elevation; or
    - b. In areas of shallow flooding (Zone AO), have the lowest floor (including basement) elevated at least as high above the highest adjacent grade as the depth number specified in feet on the FIRM plus two feet, or at least four feet if a depth number is not specified; and
    - c. Have enclosures below the lowest floor, if any, that comply with the requirements of subsection D.; or
    - d. If proposed to be elevated on fill, meet the limitations on fill in subsection D.
    - e. Basement floors that are below grade on all sides are prohibited.
  - 2. Floodproofing Requirements.
    - a. Floodproofing of new nonresidential buildings is not allowed in nontidal waters of the state (COMAR 26.17.04.11(B)(7)).
    - b. Floodproofing for substantial improvement of nonresidential buildings is allowed in nontidal waters of the state.
    - c. If floodproofing is proposed, structures shall:
      - i. Be designed to be dry floodproofed such that the building or structure is watertight with walls and floors substantially impermeable to the passage of water to the level of the flood protection elevation plus one-foot, or
      - ii. If located in an area of shallow flooding (Zone AO), be dry floodproofed at least as high above the highest adjacent grade as the depth number specified on the FIRM plus three feet, or at least five feet if a depth number is not specified; and
      - iii. Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy;
      - iv. Have floodproofing measures that are designed taking into consideration the nature of flood-related hazards; frequency, depth and duration of flooding; rate of rise and fall of floodwater; soil characteristics; flood-borne debris; at least twelve (12) hours of flood warning time from a credible source; and time necessary to implement any measures that require human intervention;
      - v. Have at least one door above the applicable flood elevation that allows human ingress and egress during conditions of flooding;

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- vi. Have an operations and maintenance plan that is filed with local emergency management officials and that specifies the owner/occupant's responsibilities to monitor flood potential; the location of any shields, doors, closures, tools, or other goods that are required for implementation; maintenance of such goods; methods of installation; and periodic inspection; and
  - vii. Be certified by a licensed professional engineer or licensed architect, through execution of a floodproofing certificate that states that the design and methods of construction meet the requirements of this section. The floodproofing certificate shall be submitted with the construction drawings as required in Section 17.42.030 E.

F. Horizontal Additions.

1. A horizontal addition proposed for a building or structure that was constructed after the date specified in Section 17.42.010 A. shall comply with the applicable requirements of Section 17.42.040 and this section.
2. In nontidal waters of the state that are subject to the regulatory authority of MDE, all horizontal additions shall comply with the applicable requirements of Section 17.42.040 and this section and:
  - a. If the addition is structurally connected to the base building, the requirements of subsection F.3. apply.
  - b. If the addition has an independent foundation and is not structurally connected to the base building and the common wall with the base building is modified by no more than a doorway, the base building is not required to be brought into compliance.
3. For horizontal additions that are structurally connected to the base building:
  - a. If the addition combined with other proposed repairs, alterations, or modifications of the base building constitutes substantial improvement, the base building and the addition shall comply with the applicable requirements of Section 17.42.040 and this section.
  - b. If the addition constitutes substantial improvement, the base building and the addition shall comply with all of the applicable requirements of Section 17.42.040 and this section.
4. For horizontal additions with independent foundations that are not structurally connected to the base building and the common wall with the base building is modified by no more than a doorway, the base building is not required to be brought into compliance.
5. A horizontal addition to a building or structure that is not substantial improvement, and is not located in nontidal waters of the state, is not required to comply with this section.

[Note: See "Substantial Improvement/Substantial Damage Desk Reference" (FEMA P-758).]

G. Accessory Structures.

1. Accessory structures shall be limited to not more than three hundred (300) square feet in total floor area.
2. Accessory structures shall comply with the elevation requirements and other requirements of subsection D., the floodproofing requirements of subsection E., or shall:
  - a. Be useable only for parking of vehicles or limited storage;
  - b. Be constructed with flood damage-resistant materials below the base flood elevation;
  - c. Be constructed and placed to offer the minimum resistance to the flow of floodwaters;
  - d. Be anchored to prevent flotation;

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- e. Have electrical service and mechanical equipment elevated to or above the base flood elevation; and
  - f. Have flood openings that meet the requirements of Section 17.42.050 D.3.

(Ord. No. 14-06, 8-18-14)

### **17.42.060 Reserved.**

### **17.42.070 Variances.**

- A. General. The board of appeals shall have the power to consider and authorize or deny variances from the strict application of the requirements of these regulations. A variance shall be approved only if it is determined to not be contrary to the public interest and where, owing to special conditions of the lot or parcel, a literal enforcement of the provisions of these regulations, an unnecessary hardship would result.

Upon consideration of the purposes of these regulations, the individual circumstances, and the considerations and limitations of this section, the board of appeals may attach such conditions to variances as it deems necessary to further the purposes of these regulations.

No variance shall be granted for an accessory structure exceeding 600 square feet. A signed Declaration of Land Restriction (Non-conversion Agreement) is required as a condition of receiving the variance. The Agreement must be recorded with the Deed. If a variance is granted and the accessory structure is not elevated or dry flood proofed, the conditions in Section 17.42.050 G apply.

The board of appeals shall notify, in writing, any applicant to whom a variance is granted to construct or substantially improve a building or structure with its lowest floor below the elevation required by these regulations that the variance is to the floodplain management requirements of these regulations only, and that the cost of federal flood insurance will be commensurate with the increased risk, with rates up to twenty-five dollars (\$25.00) per one hundred dollars (\$100.00) of insurance coverage.

A record of all variance actions, including justification for issuance shall be maintained pursuant to Section 17.42.030 B.

- B. Application for a Variance.

1. The owner of property, or the owner's authorized agent, for which a variance is sought shall submit an application for a variance to the floodplain administrator.
2. At a minimum, the application shall contain the following information: name, address, and telephone number of the applicant and property owner; legal description of the property; parcel map; description of the existing use; description of the proposed use; site map showing the location of flood hazard areas, designated floodway boundaries, flood zones, base flood elevations, and flood protection setbacks; description of the variance sought; and reason for the variance request. Variance applications shall specifically address each of the considerations in Section 17.42.070 C.
3. If the application is for a variance to allow the lowest floor of a building or structure below the applicable minimum elevation required by these regulations, the application shall include a statement signed by the owner that, if granted, the conditions of the variance shall be recorded on the deed of the property.

- C. Considerations for Variances. The floodplain administrator shall request comments on variance applications from MDE (NFIP state coordinator) and shall provide such comments to the board of appeals.

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In considering variance applications, the board of appeals shall consider and make findings of fact on all evaluations, all relevant factors, requirements specified in other sections of these regulations, and the following factors:

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 development and its contents (if applicable) to flood damage and the effect of such damage on the individual owner.
  4. The importance of the services to the community provided by the proposed development.
  5. The availability of alternative locations for the proposed use which are not subject to, or are subject to less, flooding or erosion damage.
  6. The necessity to the facility of a waterfront location, where applicable, or if the facility is a functionally dependent use.
  7. The compatibility of the proposed use with existing and anticipated development.
  8. The relationship of the proposed use to the comprehensive plan and hazard mitigation plan for that area.
  9. The safety of access to the property in times of flood for passenger vehicles and emergency vehicles.
  10. 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.
  11. The costs of providing government 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.
  12. The comments provided by MDE (NFIP state coordinator).
- D. Limitations for Granting Variances. The board of appeals shall make an affirmative decision on a variance request only upon:
1. A Showing of Good and Sufficient Cause. Good and sufficient cause deals solely with the physical characteristics of the property and cannot be based on the character of the improvement, the personal characteristics of the owner/inhabitants, or local provision that regulate standards other than health and public safety.
  2. A determination that failure to grant the variance would result in exceptional hardship due to the physical characteristics of the property. Increased cost or inconvenience of meeting the requirements of these regulations does not constitute an exceptional hardship to the applicant.
  3. A determination that the granting of a variance for development within any designated floodway, or flood hazard area with base flood elevations but no designated floodway, will not result in increased flood heights beyond that which is allowed in these regulations.
  4. A determination that the granting of a variance will not result in additional threats to public safety; extraordinary public expense, nuisances, fraud or victimization of the public, or conflict with existing local laws.
  5. A determination that the building, structure or other development is protected by methods to minimize flood damages.
  6. A determination that the variance is the minimum necessary to afford relief, considering the flood hazard.

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(Ord. No. 14-06, 8-18-14)

### **17.42.080 Enforcement.**

A. Compliance Required.

1. No building, structure or development shall hereafter be located, erected, constructed, reconstructed, improved, repaired, extended, converted, enlarged or altered without full compliance with these regulations and all other applicable regulations.
2. Failure to obtain a permit shall be a violation of these regulations and shall be subject to penalties in accordance with subsection C.
3. Permits issued on the basis of plans and applications approved by the floodplain administrator authorize only the specific activities set forth in such approved plans and applications or amendments thereto. Use, arrangement, or construction of such specific activities that are contrary to that authorization shall be deemed a violation of these regulations.

B. Notice of Violation and Stop Work Order. If the floodplain administrator determines that there has been a violation of any provision of these regulations, the floodplain administrator shall give notice of such violation to the owner, the owner's authorized agent, and the person responsible for such violation, and may issue a stop work order. The notice of violation or stop work order shall be in writing and shall:

1. Include a list of violations, referring to the section or sections of these regulations that have been violated;
2. Order remedial action which, if taken, will effect compliance with the provisions of these regulations;
3. Specify a reasonable period of time to correct the violation;
4. Advise the recipients of the right to appeal; and
5. Be served in person; or
6. Be posted in a conspicuous place in or on the property and sent by registered or certified mail to the last known mailing address, residence, or place of business of the recipients.

C. Violations and Penalties. A violation of any of the provisions of this chapter shall be a municipal infraction punishable by a fine of up to one thousand dollars (\$1,000.00). This chapter may be enforced in accordance with Local Government Article, Title 6, Annotated Code of Maryland, as may be amended from time to time. In addition, this chapter may be enforced by any other legal or equitable remedies available to the town. Each day that a violation of this chapter continues shall be deemed a separate infraction.

(Ord. No. 14-06, 8-18-14)

### **17.42.090 Subsequent amendments and effective date.**

Subsequent Amendments. All ordinances or parts of ordinances that are inconsistent with the provisions of this chapter are hereby repealed to the extent of such inconsistency. This chapter shall be amended as required by the Federal Emergency Management Agency, Title 44, Code of Federal Regulations. All subsequent amendments to this chapter are subject to the approval of the Federal Emergency Management Agency and the Maryland Department of the Environment.

(Ord. No. 14-06, 8-18-14)