

ORDINANCE NO. 2009-04

AN ORDINANCE OF THE TOWN OF MELBOURNE BEACH, BREVARD COUNTY, FLORIDA, RELATING TO CONSTRUCTION REQUIREMENTS FOR FLOOD PROTECTION; MAKING FINDINGS; AMENDING CHAPTER 4A, APPENDIX A, MELBOURNE BEACH CODE OF ORDINANCES; AMENDING SECTION 4A-85, RELATING TO STATUTORY AUTHORIZATION; AMENDING SECTION 4A-86, FINDINGS OF FACT; REVISING SECTION 4A-87, RELATING TO PURPOSE AND OBJECTIVES; AMENDING SECTION 4A-88, DEFINITIONS; REPEALING SECTIONS 4A-89 THROUGH 4A-92 AND TRANSFERRING PROVISIONS RELATING TO JURISDICTION, APPLICATION, COMPLIANCE, INTERPRETATION, AND BASIS FOR ESTABLISHING AREAS OF SPECIAL FLOOD HAZARD; ADDING NEW SECTION 4A-92.1, RELATING TO GENERAL PROVISIONS; AMENDING SECTION 4A-93, RELATING TO ADMINISTRATION, DEVELOPMENT PERMITS, AND APPLICATION; AMENDING AND REVISING SECTION 4A-94 PROVISIONS FOR FLOOD HAZARD REDUCTION AND STANDARDS AND SPECIFICATIONS; AMENDING SECTION 4A-95 RELATING TO BUILDING OFFICIAL DUTIES AND RESPONSIBILITIES; REVISING SECTION 4A-96, VARIANCE PROCEDURES; REPEALING SECTION 4A-97 AND TRANSFERRING PROVISIONS RELATING TO WARNING AND DISCLAIMER LIABILITY; PROVIDING FOR SEVERABILITY AND INTERPRETATION; PROVIDING FOR THE REPEAL OF INCONSISTENT RESOLUTIONS AND ORDINANCES; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, pursuant to the Coastal Zone Protection Act of 1985, coastal areas and areas subject to flooding are to be managed through the imposition of strict construction standards in order to minimize damage to the natural environment, private property, and life;

WHEREAS, the purpose of this Ordinance is to revise implementing provisions relating to Section 161.52 et seq., Florida Statutes, and other revisions to Florida law relating to construction regulation;

WHEREAS, the Town of Melbourne Beach Planning and Zoning Board, sitting as both the Planning and Zoning Board and the Local Planning Agency, has found and determined that this Ordinance is in the best interest of the public health, safety, aesthetics, and welfare, and is consistent with the applicable provisions of the Town's adopted Comprehensive Plan; and

WHEREAS, the Town Commission adopts the findings of the Local Planning Agency as its own,

BE IT ENACTED BY THE TOWN OF MELBOURNE BEACH, FLORIDA:

SECTION 1. That Section 4A-85, Appendix A, of the Town Code of the Town of Melbourne Beach, Florida, is hereby amended to read as follows:

§4A-85. STATUTORY AUTHORIZATION.

The Legislature ~~legislature~~ of the State of Florida ~~state~~ has ~~in Chapter 161, Florida Statutes,~~ delegated the responsibility to local government units to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry. Therefore, the Town Commission of the Town of Melbourne Beach

Florida, does hereby adopt ~~ordain~~ the following flood zone management regulations set forth in this article.

SECTION 2. That Section 4A-86, Appendix A, of the Town Code of the Town of Melbourne Beach, Florida, is hereby amended to read as follows:

§4A-86. FINDINGS OF FACT.

(a) Hurricanes and tropical rainfall ~~The flood hazards~~ hazard areas of subject the town are ~~subject~~ to periodic inundation, which ~~results in loss of~~ can threaten life and property, affect health, and safety, disrupt ~~disruption of~~ commerce and governmental services, inflict extraordinary public expenditures for flood recovery ~~protection~~ and relief, and impair ~~impairment~~ of the tax base, all of which adversely affect the public health, safety, economy and general welfare.

(b) These flood losses are caused by the cumulative effect of obstructions in floodplains causing increases in flood heights and velocities, and by the occupancy in flood hazard areas by uses vulnerable to floods or hazardous to other lands which are inadequately elevated, flood proofed, or otherwise unprotected from flood damages.

SECTION 3. That Section 4A-87, Appendix A, of the Town Code of the Town of Melbourne Beach, Florida, is hereby amended to read as follows:

§4A-87. PURPOSE; OBJECTIVE.

(a) It is the purpose of these regulations to promote the public health, safety and general welfare and to minimize public and private losses due to flood conditions in specific areas of the Town of Melbourne Beach by adopting provisions designed to:

(1) Restrict or prohibit uses which are dangerous to health, safety and property due to water or erosion hazards, which result in damaging increases in erosion or in flood heights and velocities;

(2) Require that uses vulnerable to floods, including facility structures that serve such uses, be protected against flood damage throughout their intended life span ~~at the time of initial construction;~~

(3) Require and manage, by best practice methods and sound engineering, ~~Control~~ the alteration of natural floodways, and stream channels, and/or, the creation or alteration of natural protective barriers that ~~which~~ are involved in the accommodation of flood waters;

(4) Control filling, grading, dredging, ditching and diking, and other development which may increase erosion or flood damage or restrict effective flood discharge; and

(5) Prevent or regulate the construction of elevated grades, flood barriers or inverts which do not improve the

control of unnatural floodwaters, or systems which may superimpose flood waters on other properties will unnaturally divert flood waters or which may increase flood hazards to other lands.

SECTION 4. That Section 4A-88, Appendix A, of the Town Code of the Town of Melbourne Beach, Florida, is hereby amended to read as follows:

§4A-88. DEFINITIONS.

~~For the purpose of this article the~~ The following definitions words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates shall apply unless the context clearly indicates or requires a different meaning.

ACCESSORY STRUCTURE means a structure that is located on the same parcel of property with a principal structure, whose use is incidental to the principal structure. Accessory structures may not be used for human habitation, and must be designed to have minimal flood damage potential. Examples of accessory structures are detached garages, carports and utility sheds.

APPEAL means a request for a review of the interpretation by the Board of Adjustment of any provisions of this article or a request for a variance.

AREA OF SHALLOW FLOODING means a designated AO or AH zone on the community's Flood Insurance Rate Map (FIRM) with base flood depths from one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and indeterminate, and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

AREA OF SPECIAL FLOOD HAZARD is land in a flood zone within a community subject to a one-percent or greater chance of flooding in any given year. (Also see: Special flood hazard area).

BASE FLOOD means the flood having a one percent chance of being equaled or exceeded in any given year (also called the "100-year flood" and the "regulatory flood"). 'Base flood' is the term used throughout these regulations.

BASE FLOOD ELEVATION means the highest water-surface elevation associated with the base flood.

Basement means that portion of a building having its finished floor below natural ground level on all sides.

~~**BUILDING.** Any structure built for support, shelter, or enclosure for any occupancy or storage.~~

BREAKWAY WALL means a wall that is not part of the structural support of the building and is intended through its

The design shall allow the wall panels to collapse under specific lateral loading forces without causing damage to the elevated portion of the building or the supporting foundation system.

BUILDING ADDITION (to an existing building) means any walled and roofed expansion to the perimeter of a building in which the addition is connected by a common load-bearing wall. Any walled and roofed addition, which is connected by an independent perimeter load-bearing wall, is new construction.

CRITICAL FACILITY means a facility wherein no floodwaters can be tolerated. Critical facilities include, but are not limited to schools, nursing homes, hospitals, police, fire and emergency response installations, installations that produce, use or store hazardous materials or hazardous waste.

DEVELOPMENT means any ~~Any~~ manmade change to improved or unimproved real estate, including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavating, drilling operations, or permanent storage of materials or equipment.

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

ENCROACHMENT means the advance or infringement of uses, plant growth, fill, excavation, buildings, permanent structures or development into a floodplain, which may impede or alter the flow capacity of a floodplain.

EXISTING CONSTRUCTION means construction for which the start of construction commenced before November 25, 1972, which is the date the town started participating in the National Flood Insurance Program ("NFIP").

EXISTING MANUFACTURE HOME PARK OR SUBDIVISION means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum the construction of support structures, installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) was completed before November 25, 1972, which is the date the town started participating in the National Flood Improvement Program.

EXPANSION TO AN EXISTING MANUFACTURED HOME PARK OR SUBDIVISION means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

FLOOD or FLOODING means a general and temporary condition of partial or complete inundation of normally dry areas from:

(a) The overflow of inland or tidal waters.

(b) The unusual and rapid accumulation or runoff of surface waters from any source.

FLOOD BOUNDARY AND FLOODWAY MAP ("FBFM") means the official map on which the Federal Emergency Management Agency (FEMA) or Federal Insurance Administration ("FIA") has delineated the areas of flood hazards and regulatory floodway.

FLOOD HAZARD BOUNDARY MAP ("FHBM") means an official map of the town, issued by FEMA, where the boundaries of the areas of special flood hazard have been identified.

FLOOD INSURANCE RATE MAP ("FIRM") means an official map of the town, on which FEMA has delineated both the areas of special flood hazard and the risk premium zones applicable to the community.

FLOOD INSURANCE STUDY (FIS) is the official hydraulic & hydrologic report provided by FEMA. The report contains flood profiles, as well as the FIRM, FHBM (where applicable) and the water surface elevation of the base flood.

FLOODPLAIN means any land area susceptible to flooding.

FLOOD PROGRAM means the operation of an overall program of corrective and preventive measures for reducing flood damage and

preserving and enhancing, where possible, natural resources in the flood zone, including but not limited to emergency preparedness plans, flood control works, flood zone management regulations, and open space plans.

FLOODWAY means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot.

FLOODWAY FRINGE means that area of the floodplain on either side of the regulatory floodway where encroachment may be permitted without additional hydraulic and/or hydrologic analysis.

HARDSHIP (as related to variances of these regulations) means the exceptional hardship that would result from a failure to grant the requested variance. The town requires that the variance is exceptional, and peculiar to the property involved. Economic or financial hardship alone is NOT exceptional. Inconvenience, aesthetic considerations, physical handicaps, personal preferences, or the disapproval of one's neighbors likewise cannot, as a rule, qualify as an exceptional hardship. All of these problems can be resolved through other means without granting a variance, even if the alternative is more

expensive, or requires the property owner to build elsewhere or put the parcel to a different use than originally intended.

HIGHEST ADJACENT GRADE means the highest natural elevation of the ground surface, prior to the start of construction, next to the proposed walls of a building.

HISTORIC STRUCTURE means any structure that is:

(i) Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register.

(ii) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic or a district preliminarily determined by the Secretary to qualify as a registered historic district.

(iii) Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior.

(iv) Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either by an approved state program as determined by the Secretary of the Interior, or

directly by the Secretary of the Interior in states without approved programs.

INCREASED COST OF COMPLIANCE ("ICC") means the cost to repair a "substantially" or "repetitively" flood-damaged building that is required to bring it into compliance with the requirements of these regulations. ICC coverage is provided for in every standard NFIP flood insurance policy.

LOWEST ADJACENT GRADE means the lowest elevation, after the completion of construction, of the ground, sidewalk, patio, deck support, or basement entryway immediately next to the structure.

LOWEST FLOOR means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, used solely for parking of vehicles, building access, or storage, in an area other than a basement, is not considered a building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of the non-elevation design standards of these regulations.

MANUFACTURED HOME means a single-family residential home, transportable in one or more sections, which is built on a chassis and designed to be used with or without a permanent foundation when connected to the required utilities. The term, only for the purpose of these regulations, also includes park trailers, travel trailers, and similar transportable structures

placed on a site for 180 consecutive days or longer and intended to be improved property.

MANUFACTURED HOME PARK or MANUFACTURED HOME SUB-

DIVISION means a parcel of property (or contiguous properties) of land divided into two or more manufactured home lots for rent or sale.

MARKET VALUE generally means the building value, excluding the land (as agreed to between a willing buyer and seller), as established by what the local real estate market will bear, unless the owner or seller is denied fair use-to-cost value of land. Market value can be established by independent certified appraisal, replacement cost depreciated by age of building (actual cash value), or adjusted assessed values.

MEAN SEA LEVEL means the average height of the sea for all stages of the tide. It is used as a reference for establishing various elevations within the flood zone. For purposes of these regulations, the term is synonymous with National Geodetic Vertical Datum (NGVD).

NATIONAL GEODETIC VERTICAL DATUM (NGVD) as corrected in 1929 is a vertical control used as a reference for establishing varying elevations within the flood zone.

NEW CONSTRUCTION means construction for which the "start of construction" commenced on or after November 25, 1972, which is

the date the town started participating in the National Flood Improvement Program.

NEW MANUFACTURED HOME PARK or MANUFACTURED HOME SUBDIVISION

means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after November 25, 1972, which is the date the town started participating in the National Flood Improvement Program.

OBSTRUCTION includes, but is not limited to, any dam, wall, wharf, embankment, levee, dike, pile, abutment, protection, excavation, channelization, bridge, conduit, culvert, building, wire, fence, rock, gravel, refuse, fill, structure, vegetation or other material in, along, across or projecting into any watercourse which may alter, impede, retard or change the direction and/or velocity of the flow of water, or due to its location, its propensity to snare or collect debris carried by the flow of water, or its likelihood of being carried downstream.

PUBLIC SAFETY AND NUISANCE means anything which is injurious to safety or health of an entire community or

neighborhood, or any considerable number of persons, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin.

RECREATIONAL VEHICLE (RV) means a vehicle that is designed to include three or more of the following:

(i) Multi-power appliances, (such as LP gas, 120v AC and/or 12v DC appliance power).

(ii) Self contained waste and/or potable water holding tanks.

(iii) 400 square feet or less when measured at the largest horizontal projection.

(iv) Designed to be self-propelled or permanently towable by a full size vehicle.

(v) Not intended to be used as a permanent dwelling. Principal use will be recreation/vacation occupancy for camping, travel, or seasonal use.

REGULATORY FLOODWAY means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot.

REPETITIVE LOSS means flood-related damages sustained by a structure on two separate occasions during a ten-year period

ending on the date of the event for which the second claim is made, in which the cost of repairing the flood damage, on the average, equaled or exceeded 25 percent of the market value of the building at the time of each such flood event.

START OF CONSTRUCTION. ~~(For other than new construction or substantial improvements under the Coastal Barrier Resources Act (PL. 97-348), includes substantial improvement and means the date the building permit was issued, provided the start of construction, repair, reconstruction or improvement was within 180 days of the permit date.~~ The actual start means the first placement of permanent construction of a structure building (including a manufactured home) on a site, such as the pouring of slabs or footings, installation of piles, construction of columns, or any work beyond the stage of excavation or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory structures buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure building. For a substantial

improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a structure, whether or not that alteration affects the external dimensions of the structure.

STRUCTURE. means any free standing or supported system created of materials obstructive to the natural flow of water and erected above natural undisturbed ground level. Structures may also include sub grade formations where the gravity flow of water may be harmfully modified. A walled and roofed building that is principally above ground, a manufactured home, a gas or liquid storage tank or other man-made facilities or infrastructures.

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

SUBSTANTIAL IMPROVEMENT. means any ~~Any combination of repairs, reconstruction, alteration~~ rehabilitation, addition, or other improvements of improvement to a site built, mobile home or modular structure, taking place during the life of a structure, in which the cumulative cost of which equals or exceeds fifty percent (50%) ~~50%~~ of the market value of the

structure before the "start of construction" of the improvement.
The market value of the structure should be the appraised value
of the structure prior to the start of the initial repair or
improvement, or in the case of damage, the value of the
structure prior to the damage occurring. **SUBSTANTIAL**
~~IMPROVEMENT~~ ~~is considered to occur when the first alteration of~~
~~any wall, ceiling, floor or other structural part of the~~
~~building commences, whether or not that alteration affects the~~
~~external dimensions of the structure.~~ This term also includes
structures that have incurred over fifty percent (50%) damage or
"repetitive loss", regardless of the actual repair work
performed. This term does not, however, include any repair or
~~project for~~ improvement of a structure to correct existing
violations of state or local code specifications, which have
been identified by the building code official prior to the
application for, permit for improvement and which is the minimum
necessary to assure safe living conditions ~~comply with existing,~~
~~sanitary, or safety code specifications which are solely~~
~~necessary to assure safe living conditions.~~ This includes any
combination of repairs, reconstruction, rehabilitation,
addition, alteration, or other improvements to a building taking
place during a thirty (30) year period in which the cumulative

cost of such improvements equals or exceeds fifty percent (50%) of the market value of the building either:

(i) Before the improvement is started; or

(ii) In case of substantial damage, before the

damage occurred. For the purposes of this definition

"substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure.

SUBSTANTIALLY IMPROVED EXISTING MANUFACTURED HOME PARKS or SUBSTANTIALLY IMPROVED EXISTING MANUFACTURED HOME

SUBDIVISIONS is where the repair, reconstruction, rehabilitation or improvement of the streets, utilities and pads equals or exceeds 50% of the value of the streets, utilities and pads before the repair, reconstruction or improvement commenced.

VARIANCE- is a A grant of relief ~~to a person~~ from the requirements of this article, which permits construction in a manner otherwise prohibited by this article where specific enforcement would result in unnecessary hardship.

VIOLATION means the failure, in specifications, of a structure to comply with the requirements of these regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of

compliance required in these regulations are presumed to be in violation until such time as that documentation is provided.

WATERCOURSE means a lake, river, creek, stream, wash, channel or other topographic feature on or over which waters flow at least periodically. Watercourse includes specifically designated areas in which substantial flood damage may occur.

WATER SURFACE ELEVATION means the height, in relation to the National Geodetic Vertical Datum (NGVD) of 1929, (or other datum, where specified) of floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas.

SECTION 5. That Section 4A-89, Appendix A, of the Town Code of the Town of Melbourne Beach, Florida, is hereby amended to read as follows:

§ 4A-89. JURISDICTION; APPLICATION. Repealed.

~~This article shall apply to all areas of special flood hazard within the jurisdiction of the town.~~

SECTION 6. That Section 4A-90, Appendix A, of the Town Code of the Town of Melbourne Beach, Florida, is hereby amended to read as follows:

§ 4A-90. COMPLIANCE. Repealed.

~~No structure or land shall hereafter be located, extended, converted or structurally altered without full compliance with the terms of this article and other applicable regulations.~~

SECTION 7. That Section 4A-91, Appendix A, of the Town Code of the Town of Melbourne Beach, Florida, is hereby amended to read as follows:

§ 4A-91. INTERPRETATION. Repealed.

~~In the interpretation and application of this article all provisions shall be:~~

~~(1) Considered as minimum requirements;~~

~~(2) Liberally construed in favor of the Town Commission;~~

and

~~(3) Deemed neither to limit nor repeal any other powers granted under state statutes.~~

SECTION 8. That Section 4A-92, Appendix A, of the Town Code of the Town of Melbourne Beach, Florida, is hereby amended to read as follows:

§ 4A-92. BASIS FOR ESTABLISHING AREAS OF SPECIAL FLOOD HAZARD.

Repealed.

~~The areas of special flood hazard identified by the Federal Emergency Management Agency in its most current flood insurance rate map (FIRM), with accompanying maps and other supporting data and any revisions thereto are adopted by reference and declared to be part of this article.~~

SECTION 9. That the Town Code of the Town of Melbourne Beach, Florida, is hereby amended by adding a Section, to be numbered 4A-92.1, which said section reads as follows:

§4A-92.1. GENERAL PROVISIONS.

(a) Lands to which these regulations apply. These regulations shall apply to all areas within the town and specifically, any areas of special flood hazard within the jurisdiction of the town.

(b) Basis for establishing the areas of special flood hazard. The areas of special flood hazard identified by the Federal Emergency Management Agency in its flood insurance study for the Town, dated November 25, 1972, with accompanying maps and other supporting data, and any revision thereto, are adopted by reference and declared to be a part of this article. In addition, upon annexation to the Town, the areas of special flood hazard identified by the Federal Emergency Management Agency in its flood insurance study dated November 19, 1997, for the unincorporated county, with accompanying maps and other supporting data, and any revision thereto, are adopted by reference and declared to be apart of this article.

(c) Establishment of flood risk development permit. A development permit shall be required in conformance with the provision of this article prior to the commencement of any

development activities. "Development" means any manmade change to improved or unimproved real estate, including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavating, drilling operations, or permanent storage of materials or equipment.

(d) Compliance. No structures or land increasing flood risks shall be located, extended or converted without compliance with the terms of these regulations and other applicable state building codes regulations.

(e) Abrogation and greater restrictions. These regulations are not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where these regulations and another conflict, or overlap, whichever regulation imposes the more stringent restrictions shall prevail.

(f) Interpretation. In the interpretation and application of these regulations all provisions shall be:

(1) Considered based on severity of consequent impacts;

(2) Fairly construed in favor of the property owner combined with the highest and best application of flood risk/hazard prevention; and

(3) Deemed neither to limit nor repeal any other powers granted under state statutes.

(g) Warning and Disclaimer of Liability. The degree of flood protection required by these regulations are considered reasonable for regulatory purposes and is based on scientific and engineering consideration. Great floods can and will occur on rare occasions. These regulations do not imply that land outside the areas of special flood hazard or uses permitted within such areas will be free from flooding or flood damages. These regulations shall not create liability on the part of the Town Commission of the town or by any officer or employee thereof for any flood damages that result from reliance on these regulations or any administrative decision lawfully made thereunder.

(h) Penalties for violation. Violation of the provisions of these regulations or failure to comply with any of its requirements, including violation of conditions and safeguards established in connection with grants of variance or special exceptions, shall constitute a violation of a municipal ordinance, punishable as provided in section 1-99 of this code. Each day such violation continues shall be considered a separate offense. Nothing herein contained shall prevent the town from

taking such other lawful actions as are necessary to prevent or remedy any violation.

SECTION 10. That Section 4A-93, Appendix A, of the Town Code of the Town of Melbourne Beach, Florida, is hereby amended to read as follows:

§4A-93. ADMINISTRATION; DEVELOPMENT PERMIT; APPLICATION.

(a) Designation of the flood program administrator. The town building official is hereby appointed to administer and implement the provisions of these regulations.

(b) Permit procedures for building construction.

Application of a development permit for constructing or substantially improving a structure shall be made to the building official on forms furnished by the building department ~~him~~ prior to any development activities, and may include, but not be limited to, filing the following prepared plans in duplicate drawn to scale showing the nature, location, dimensions, and elevations of the area in question; existing or proposed structures, earthen fill, storage of materials or equipment; drainage facilities, and the location of the foregoing. Specifically, the following information is required:

- (1) Application stage.

a. Elevation in relation to mean sea level of the proposed lowest floor (including basement) of all structure.

b. Elevation in relation to mean sea level to which any non-residential structure will be ~~has been~~ flood-proofed.

c. ~~Provide a~~ Signed, sealed certificate, separate from the submitted plans, from a registered professional engineer or architect certifying that the nonresidential flood proofed structure will meet ~~meets~~ the flood proofing criteria in §4A-93(b)(2)b ~~§4A-94(B)(2)~~.

d. Description of the extent to which any watercourse will be altered or relocated as result of proposed development.

e. Description of the type, extent, and depth of proposed fill and the elevation in relation to mean sea level of the top surface of the fill.

f. Description of the type, extent, and depth of proposed excavation in relation to mean sea level.

g. Plot plan, to scale, illustrating the locations of all proposed construction, fill, excavating, and other aspects of the development.

h. Copy of the proposed stormwater management report and floodplain study, if any, complete with technical supporting data.

(2) Construction stage. Floor elevation or flood proofing certifications.

a. Upon placement of the lowest floor it shall be the duty of the permit holder to submit to the building official, certification of the elevation of the top of the lowest floor, as built, in relation to mean sea level, or the lowest surface of any heating or air conditioning ductwork installed below the lowest floor. This certification shall be made on a FEMA elevation certificate form No. 81-31, or a form containing at least the same information, and shall be prepared by or under the direct supervision of a registered land surveyor or professional engineer and certified by same, except that in A zones for which flood elevations have not been provided or determined and in AO zones, the building official may certify the lowest floor elevation. ~~Provide a floor elevation or flood proofing certification after the lowest floor is completed, or in instances where the structure is subject to the regulations applicable to coastal high hazard areas, after placement of the horizontal structural members of the lowest floor. Upon placement of the lowest floor, or floodproofing by whatever~~

~~construction means, or upon placement of the horizontal structural members of the lowest floor, whichever is applicable, it shall be the duty of the permit holder to submit to the Building Official a certification of the elevation of the lowest floor, floodproofed elevation or the elevation of the lowest portion of the horizontal structural members of the lowest floor, whichever is applicable, as built, in relation to mean sea level. Said certification shall be prepared by or under the direct supervision of a registered land surveyor or professional engineer and certified by same. When flood proofing is utilized for a particular building, said certification shall be prepared by or under the direct supervision of a professional engineer or architect and certified by same.~~

b. When flood proofing is utilized for a nonresidential building, the permit holder shall submit to the building official a flood proofing certification at the time the exterior walls are completed to the required flood proofed elevation. This certification shall be prepared by or under the direct supervision of a professional engineer or architect and certified by same, utilizing the FEMA flood proofing certificate form No. 81-65, or the equivalent.

c. Any additional work undertaken prior to submission and approval of the certification shall be at the permit holder's risk.

d. The building official shall review the floor elevation survey data or flood proofing certification submitted. Deficiencies detected by such review shall be corrected by the permit holder immediately and prior to further progressive work being permitted to proceed.

e. Failure to submit the elevation survey or flood proofing certifications, or failure to make said corrections required hereby, shall be cause to issue a stop work order for the project.

(c) Permit procedures for other developments (including subdivisions). Application for a development permit for developments other than the construction of buildings, such as bridges, subdivisions, shopping centers, and other large construction projects that include substantial site development or alteration, shall be made to the building official on forms furnished by the building department prior to any development activities, and shall include, but not be limited to, the following plans in duplicate drawn to scale showing the nature, location, dimensions, and elevations of the area in question, existing or proposed structures, earthen fill, storage of

materials or equipment, drainage facilities, and the location of the foregoing. Specifically, the following information is required

(1) Application stage.

a. Plot plan, to scale, illustrating the locations of all proposed construction, fill, excavating, and other aspects of the development.

b. Grading and drainage plans.

c. Stormwater management.

d. Floodplain studies, including computer modeling of hydrology.

e. Description of the extent to which any watercourse, swamp, marsh, lake, or pond will be altered, relocated, or created as a result of proposed construction.

f. Description of the type, extent, and depth of proposed fill and the elevation in relation to mean sea level of the top surface of the fill.

g. Description of the type, extent, and depth of proposed excavation in relation to mean sea level.

h. Topographic mapping.

i. No-rise certification for projects within a regulatory floodway pursuant to this regulation.

(2) Conditions of approval (mapping of flood hazard areas).

a. If the project proposes to alter the boundaries of a regulatory floodway or the configuration of the watercourse contained within the floodway, the applicant shall submit the proposed grading and drainage plans, stormwater management plans, floodplain studies, and all supporting computer modeling to the FEMA region IV office for a conditional letter of map revision. The project will not receive final approval until the proposed alteration of the watercourse and/or floodway boundaries has been approved by FEMA.

b. If a proposed project will alter the boundaries of the area of special flood hazard as shown on the FEMA flood insurance rate maps, the applicant shall submit the approved grading and drainage plans, stormwater management plans, floodplain studies, and all supporting computer modeling to the FEMA region IV office for a conditional letter of map revision, within 30 days of receiving final approval.

c. Within 30 days following completion of the entire project or a phase thereof, the applicant shall submit engineer's certified copies of the final, constructed grading and drainage plans and stormwater management plans to

the FEMA region IV office for issuance of a final letter of map revision.

d. The building official shall be provided copies of all related correspondence, and shall sign the required community acknowledgment form.

SECTION 11. That Section 4A-94, Appendix A, of the Town Code of the Town of Melbourne Beach, Florida, is hereby amended to read as follows:

§4A-94. PROVISIONS FOR FLOOD HAZARD REDUCTION STANDARDS AND SPECIFICATIONS.

(a) *General standards.* ~~In all areas of special flood hazard the following provisions are required:~~ The following general standards shall apply, as a minimum requirement, in all designated FEMA zones.

(1) New construction and substantial improvements shall be anchored to prevent flotation, collapse or lateral movement of the structure.

(2) Manufactured homes shall be anchored to prevent flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This standard shall be in addition to and consistent with applicable state requirements for resisting wind forces.

(3) New construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.

(4) New construction or substantial improvements shall be constructed by methods and practices that minimize flood damage.

(5) Electrical, heating, ventilation, plumbing, air conditioning equipment, including ductwork, and other service facilities shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

(6) New and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the system.

(7) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems and discharges from the systems into floodwaters.

(8) On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during flooding.

(9) Alteration, repair, reconstruction or improvements to a structure that ~~which~~ is not in compliance with

the provisions of this article, shall be undertaken only if the nonconformity is not furthered, extended, or replaced ~~meet the requirements of new construction as contained in this article.~~

(10) The flood-carrying capacity of a watercourse shall not be diminished by any relocation of alteration or bridge construction.

(11) Adequate drainage paths shall be provided around structures to guide stormwater runoff away from them.

(12) The cumulative effect of proposed development, when combined with all other existing and anticipated development, will not increase the flood elevation more than one foot at any point in the community.

(b) *Specific standards.* In all areas of special flood hazard ~~where base flood elevation data has been provided as set forth in §4A-92 or §4A-95(B)(11),~~ the following specific standards shall apply ~~provisions are required:~~

(1) Residential construction. New construction ~~in excess of \$2,000~~ or substantial improvement of any residential structure ~~(or manufactured home)~~ shall have the lowest floor, including basement, together with all mechanical and electrical equipment, including laundry facilities and food freezers, and including any basement, elevated to or above no lower than 18 inches above the base flood elevation, or 18 inches above the

crown of the adjoining road, whichever is highest. Should solid foundation perimeter walls be used to elevate a structure, openings sufficient to facilitate the unimpeded movements of floodwaters shall be provided in accordance with standards of sub-section ~~division~~ (b)(3) hereof ~~of this section~~. The floor of an attached garage may be placed below the base flood elevation, provided the openings required in sub-section (b)(3) hereof are installed and all mechanical and electrical equipment, including laundry facilities and food freezers, are elevated above the base flood elevation. One switch and outlet connected to a ground-fault interrupt breaker may be installed below the base flood elevation, and all construction below that elevation shall be of flood-resistant materials.

(2) Non-residential construction. New construction or substantial improvement of any commercial, industrial, assembly or non-residential structure (or manufactured home) shall have the lowest floor, including basement, elevated to no less than 18 inches above ~~lower than the level~~ of the base flood elevation ("BFE"), or 18 inches above the crown of any adjoining road whichever is highest. Structures located in all A, A2, A7 and B Zones ~~zones~~ shall be elevated to no less than 24 inches above the base flood elevation ("BFE"), or 24 inches above the crown of any adjoining road whichever is highest, or as

specified on flood maps. ~~may be floodproofed~~ Flood-proofing in lieu of being elevated may be applied provided that all areas of the structural components ~~structures~~ below the required elevation corresponding to the BFE plus one foot are watertight with walls substantially impermeable to the passage of water, and use structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effect of buoyancy. A registered professional engineer or architect shall certify that the standards of this subsection ~~division (b)(2) of this section~~ are satisfied. Such certification shall be provided to the building official as set forth in subsection §4A-93(b)(1)c.

(3) Elevated buildings. New construction or substantial improvements of elevated buildings that include fully enclosed areas formed by foundation and other exterior walls below the base flood elevation shall be designed to preclude finished living space and shall be designed to allow for the entry and exit of floodwaters to automatically equalize hydrostatic flood forces on exterior walls.

a. Designs for complying with this requirement must either be certified by a professional engineer or architect, or meet the following minimum criteria:

1. Provide a minimum of two openings (in walls or doors) having a total net area of not less than one

square inch for every square foot of enclosed area subject to flooding;

2. The bottom of all openings shall be no higher than one foot above grade; and

3. Openings may be equipped with screens, louvers, valves or other coverings or devices provided they permit the automatic flow of floodwaters in both directions.

b. Access to the enclosed area shall be the minimum necessary to allow for parking of vehicles (garage door) or limited storage of maintenance equipment used in connection with the premises (standard exterior door) or entry to the living area (stairway or elevator) ~~Electrical, plumbing, and other utility connections are prohibited below the base flood elevation;~~

c. ~~d.~~ The interior portion of such enclosed area shall not be partitioned or finished into separate rooms.

d. Use of such enclosed areas shall be limited to parking, storage, and building access.

(4) Manufactured homes and recreational vehicles.

a. All manufactured homes placed, or substantially improved, on individual lots or parcels, in expansions to existing manufactured home parks or subdivisions, in a new manufactured home park or subdivision or in

substantially improved manufactured home parks or subdivisions, must meet all the requirements for new construction, including elevation and anchoring.

b. All manufactured homes placed or substantially improved in an existing manufactured home park or subdivision must be elevated so that:

1. The lowest floor of the manufactured home is elevated no lower than 18 inches above the base flood elevation (BFE), plus the depth of the chassis "I" beams vertically up to the height of the finished floor.

2. The manufactured home must be blocked, tied and anchored by a state licensed contractor in accordance with state DMV specifications.

3. The manufactured home must be securely anchored to the foundation system to resist flotation, collapse and lateral movement.

4. In an existing manufactured home park or subdivision on which a manufactured home has incurred substantial damage as the result of a flood, any manufactured home placed or substantially improved must meet the standards of subparagraphs (4)b.1 and 3 of this subsection.

5. Any additions to manufactured homes subject to provisions of this subsection shall be considered new

construction subject to the provisions contained in paragraphs (1) and (3) of this subsection including installation on permanent foundation systems, elevation, and anchoring.

c. All recreational vehicles placed on sites must either:

1. Be on the site for fewer than 180 consecutive days.

2. Be fully licensed and ready for highway use (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).

3. Meet all the requirements for new construction, including anchoring and elevation requirements of subparagraphs (4)a. or b.1 and b.3 above.

(5) Accessory structures. Structures that represent a minimal investment and that are subordinate to and accessory to the primary structure or use on the property (e.g. storage sheds, detached garages, gazebos, and barns) may be exempted from the elevation requirement of paragraph (2) of this subsection, provided the following criteria are met:

a. The structure is not used for human habitation, including occupancy as a workplace, for extended periods of time.

b. The structure is designed and constructed so as to have a low potential for damage during a flood (e.g. using flood resistant materials as provided by FEMA criteria.)

c. The structure shall be located on the building site so as to offer the minimum resistance to the flow of floodwaters (e.g. parallel to a stream, perpendicular to the ocean).

d. The structure is firmly anchored to prevent flotation, per subparagraph (4)b.3. above.

e. All electrical service, heating/cooling equipment, and other mechanical or electrical equipment is either elevated above the elevation required by paragraph (1) of this subsection, or is flood proofed. One electrical switch and outlet connected to a ground-fault interrupt breaker is allowed below the base flood elevation.

(6) Substantially improved buildings. Substantial improvement means any combination of repairs, reconstruction, alteration, or improvements to a building (including electrical, plumbing and heating/air conditioning), taking place during a two (2) year period, in which the cumulative cost equals or

exceeds fifty percent (50%) of the market value of the building.
Substantially improved buildings must be elevated and otherwise
brought into conformance with the requirements for new
construction contained in these regulations. In determining
substantial improvement, the building official shall utilize
data for the market value of the structure and the value of the
improvements that are justifiably comparable. Substantial
improvement calculations shall include the cost of labor and
mechanical, electrical and plumbing systems, cabinetry,
finishes, and any other improvements that will be permanently
affixed to the structure, except for exterior decks and porches.
If the improvement project is conducted in phases, the total of
all costs associated with each phase, beginning with issuance of
the first permit, shall be utilized to determine whether
substantial improvement has occurred. Interpretation and
determination of substantial improvements shall rely on
applicable FEMA publications and policy guidance.

a. *Rehabilitations, reconstructions, and*
renovations. When an existing building is rehabilitated,
reconstructed, or renovated, with no or only minimal additions,
and the total improvement costs meet the definition of
substantial (equal or exceed fifty percent (50%) of the value of

the structure), the existing structure must be elevated and otherwise brought into conformance with this division.

b. Lateral additions. When the substantial improvement is a lateral addition to an existing structure, only the addition is required to be elevated and conform with the standards of this division, unless the common wall between the existing building and the addition is substantially removed or improvements are being made to the existing structure which, independently from the addition, equal or exceed fifty percent (50%) of the value of the structure. In such cases, the lateral addition is deemed to constitute only one part of a reconstruction or renovation, and both the existing structure and the addition must conform to this division.

c. Vertical additions. When the substantial improvement is a vertical addition to an existing structure, the improvement is classified as a renovation or reconstruction, and the existing structure must be elevated and brought into conformance with this division.

(7) Historic buildings. Any improvements to historic buildings may be exempted from one or all of the standards contained in this subsection, provided the request for an exemption is approved as a variance, and the proposed improvements are certified by a certified local government or

the state historic preservation officer as maintaining the historical integrity and classification of the building.

~~(4) Floodways. Located within areas of special flood hazard established in § 4A-92, are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of flood waters which carry debris, potential projectiles and erosion potential, the following provisions shall apply:~~

~~a. Prohibit encroachments, including fill, new construction, substantial improvements, and other developments unless certification (with supporting technical data) by a registered professional engineer or architect is provided demonstrating that encroachments shall not result in any increase in flood levels during occurrence of the base flood discharge;~~

~~b. If division (b)(5)a. of this section is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of this section.~~

~~e. Prohibit the placement of any manufactured homes (mobile homes) except in an existing manufactured home (mobile home) park or subdivision. A replacement manufactured home may be placed on a lot in an existing manufactured home~~

~~park or subdivision provided the anchoring standards of division (A)(2) of this section, and the elevation standards of division (B)(1) of this section are met.~~

~~(5) Coastal high hazard areas (V Zones). Located within the areas of special flood hazard established in § 4A-92 are areas designated as coastal high hazard areas. These areas have special flood hazards associated with wave wash; therefore, the following provisions shall apply:~~

~~a. All buildings or structures shall be located 25 feet landward of the Coastal Construction Control Line as set by the State of Florida, Department of Natural Resources;~~

~~b. All buildings or structures shall be elevated so that the bottom of the lowest supporting horizontal member (excluding pilings or columns) is located no lower than the base flood elevation level, with all space below the lowest supporting member open so as not to impede the flow of water. Open lattice work or decorative screening may be permitted for aesthetic purposes only and must be designed to wash away in the event of abnormal wave action and in accordance with division (b)(5)h. of this section;~~

~~c. All buildings or structures shall be securely anchored on pilings or columns;~~

~~d. All pilings and columns and the attached structures shall be anchored to resist flotation, collapse, and lateral movement due to the effect of wind and water loads acting simultaneously on all building components. The anchoring and support system shall be designed with wind and water loading values which equal or exceed the 100 year mean recurrence interval (1% annual chance flood);~~

~~e. A registered professional engineer or architect shall certify that the design, specifications and plans for construction are in compliance with the provisions contained in divisions (b)(5)b., c., and d. of this section;~~

~~f. There shall be no fill used as structural support. Noncompacted fill may be used around the perimeter of a building for landscaping/aesthetic purposes provided the fill will wash out from storm surge (thereby rendering the building free of obstruction), prior to generating excessive loading forces, ramping effects or wave deflection. The Building Official shall approve design plans for landscaping/aesthetic fill only after the applicant has provided an analysis by an engineer, architect, and/or soil scientist which demonstrates that the following factors have been fully considered:~~

~~1. Particle composition of fill material does not have a tendency for excessive natural compaction;~~

~~2. Volume and distribution of fill will not cause wave deflection to adjacent properties; and~~

~~3. Slope of fill will not cause wave run-up or ramping.~~

~~g. There shall be no alteration of sand dunes or mangrove stands which would increase potential flood damage;~~

~~h. Lattice work or decorative screening shall be allowed below the base flood elevation provided they are not part of the structural support of the building and are designed so as to break away, under abnormally high tides or wave action, without damage to the structural integrity of the building on which they are to be used and provided the following design specifications are met:~~

~~1. No solid walls shall be allowed; and~~

~~2. Material shall consist of lattice or mesh screening only.~~

~~i. If aesthetic lattice work or screening is utilized, such enclosed space shall not be designed to be used for human habitation, but shall be designed to be used only for parking of vehicles, building access, or limited storage of maintenance equipment used in connection with the premises.~~

~~j. Prior to construction, plans for any structures that will have lattice work or decorative screening~~

~~must be submitted to the Building Official for approval as being in compliance with the Town Code;~~

~~k. Any alteration, repair, reconstruction, or improvement to a structure shall not enclose the space below the lowest floor except with lattice work or decorative screening, as provided for in division (b)(5)h. and i. of this section; and~~

~~l. Prohibit the placement of manufactured homes (mobile homes), except in an existing manufactured homes (mobile homes) park or subdivision. A replacement manufactured home may be placed on a lot in an existing manufactured home park or subdivision provided the anchoring standards of division (a)(2) of this section and the elevation standards of division (b)(1) of this section are met.~~

(c) *Standards for streams without established base flood elevation and floodways.* Located within the areas of special flood hazard as established in §4A-92, where ~~small~~ streams exist for which no base flood elevation data or regulatory floodway has been provided, ~~the following provisions apply:~~ designated by the Federal Emergency Management Agency, no building or development may be permitted unless providing a flood control or abatement function.

~~(1) No encroachments, including fill material or structures, shall be located within a distance of the stream~~

~~bank equal to two times the width of the stream at the top of the bank or 20 feet each side from top of bank, whichever is greater, unless certification by a registered professional engineer is provided demonstrating that such encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge.~~

~~(2) New construction or substantial improvements of structures shall be elevated or floodproofed to elevations established in accordance with § 4A-94(b).~~

~~(d) Standards for subdivision proposals.~~

~~(1) All subdivision proposals shall be consistent with the need to minimize flood damage;~~

~~(2) All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize flood damage;~~

~~(3) All subdivision proposals shall have adequate drainage provided to reduce exposure to flood hazards; and~~

~~(4) Base flood elevation data shall be provided for subdivision proposals and other proposed development (including manufactured home parks and subdivision) which is greater than the lesser of 50 lots or five acres.~~

~~(d) (e) Standards for streams with established base flood elevation without regulatory floodways area of shallow flooding (A0 zones).~~

~~(1) Located within the areas of special flood hazard established in §4A-92 are areas designated as shallow flooding areas where streams exist for which base flood elevation data has been provided by the federal emergency agency, no building or development may be permitted unless providing a flood control or abatement function. These areas have special flood hazards associated with base flood depths of one to three feet where a clearly defined channel does not exist and where the path of flooding is unpredictable and indeterminate; therefore, the following provisions apply:~~

~~(1) All new construction and substantial improvements of residential structures shall have the lowest floor, including basement, elevated to the depth number specified on the flood insurance rate map, in feet, above the highest adjacent grade. If no depth number is specified, the lowest floor, including basement, shall be elevated at least two feet above the highest adjacent grade.~~

~~(2) All new construction and substantial improvements of nonresidential structures shall:~~

~~a. Have the lowest floor, including basement, elevated to the depth number specified on the flood insurance rate map, in feet, above the highest adjacent grade. If no depth number is specified, the lowest floor, including basement, shall be elevated at least two feet above the highest adjacent grade;~~
~~or~~

~~b. Together with attendant utility and sanitary facilities be completely floodproofed to or above that level so that any space below that level is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.~~

(2) Activities in zones A1-30, AE, and AH, on the town's FIRM which increase the water surface elevation of the base flood by more than one foot may be allowed, provided that the developer or applicant first applies with the town's endorsement, for a conditional FIRM revision, and receives the approval from the Federal Emergency Management Agency.

(e) Standards for subdivision proposals (AO zones).
Located within the areas of special flood hazard, are areas designated as shallow flooding areas. These areas have flood hazards associated with base flood depths of one to three feet,

where a clearly defined channel does not exist and the path of flooding is unpredictable and indeterminate.

(f) Standards for subdivision proposals.

(1) All subdivision proposals shall be consistent with the need to minimize flood damage. All subdivision proposals shall have public utilities and facilities such as sewer, electrical and water systems located and constructed to minimize flood damage.

(2) All subdivision proposals shall have adequate drainage provided to reduce exposure to flood hazards.

(3) Base flood elevation data shall be provided for subdivision proposals and other proposed development proposals (including manufactured home parks and subdivisions) that exceed 50 lots or five acres, whichever is the lesser.

(4) Due to risk of high seasonable water tables and low mean average land elevation construction of basements shall require signed and sealed engineered design including structural design, flood proofing, electrical, mechanical, plumbing and sump design.

(5) The base flood boundary, floodway and/or V zone boundary if applicable, and the applicable base flood elevation for the building site on each lot shall be clearly marked on all

recorded subdivision plats be they for residential, commercial, or industrial use.

(g) Critical facilities. Construction of new critical facilities shall be, to the extent possible, located outside the 0.2% annual chance floodplain. Critical facilities constructed within a SFHA shall have the lowest floor elevated three or more feet above the level of the base flood elevation at the site. Flood proofing and sealing measures must be taken to ensure that toxic substances will not be displaced by or released into floodwaters. Access routes elevated to or above the level of the base flood elevation shall be provided to all critical facilities to the extent possible.

SECTION 12. That Section 4A-95, Appendix A, of the Town Code of the Town of Melbourne Beach, Florida, is hereby amended to read as follows:

§ 4A-95. BUILDING OFFICIAL; DUTIES AND RESPONSIBILITIES.

(a) Duties and responsibilities of the flood program management administrator. The building official, as the local administrator of these regulations, is hereby appointed to administer and implement the provisions of this article.

(b) The duties ~~Duties~~ of the building official ~~Building Official~~ shall include, but not be limited to:

(1) Review all development permits and plans to assure that the permit requirements of this article ~~Article IX~~ have been satisfied;

(2) Notify adjacent communities, the state National Flood Improvement Program coordinator, and other federal and/or state agencies with statutory or regulatory authority prior to any alteration or relocation of a watercourse; ~~Advise permittee that additional federal or state permits may be required and, if specific federal or state permit requirements are known, require that copies of such permits be provided and maintained on file with the development permit;~~

~~(3) Notify Brevard County, the Town of Indialantic, the City of Melbourne and the State Department of Community Affairs prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency;~~

~~(4) Assure that maintenance is provided within the altered or relocated portion of said watercourse so that the flood-carrying capacity is not diminished;~~

(3) ~~(5)~~ Verify and record the actual elevation (in relation to mean sea level) of the lowest floor (including basement) of all new or substantially improved structures ~~in~~ accordance with ~~§4A-93(b)(2)~~;

(4) ~~(6)~~ Verify and record the actual elevation (in relation to mean sea level) to which the new or substantially improved structures have been flood proofed ~~in accordance with §4A-93(b)(2);~~

(5) When there appears to be a conflict between a mapped boundary and actual field conditions, the Town's FEMA flood program administrator shall seek a determination from an engineer, and the best professional sources available;

(6) When base flood elevation data or flood zone data have not been provided the building official shall obtain, review and reasonably utilize any base flood elevation and flood zone data available from a federal, state, or any other source, in order to administer the provisions of these regulations;

(7) Coordinate all change requests to the FIS and FIRM or FBFM or both with the requester, state, and FEMA; and ~~In coastal high hazard areas certification shall be obtained from a registered professional engineer or architect that the structure is designed to be securely anchored to adequately anchored pilings or columns in order to withstand velocity waters and hurricane wave wash;~~

(8) Obtain a no-rise certification pursuant or a conditional letter of map revision from FEMA prior to issuance

of final approval of a proposed development located within a regulatory floodway.

~~(8) In coastal high hazard areas, the Building Official shall review plans for the adequacy of breakaway walls in accordance with § 4A-94(b)(5)h.~~

~~(9) When floodproofing is utilized for a particular structure, the Building Official shall obtain certification from a registered professional engineer or architect in accordance with § 4A-94(b)(2).~~

(c) The building official shall determine whether a building or development site is located within an area of special flood hazard by referencing the FEMA flood insurance study and accompanying maps. If detailed topographic mapping is available, the boundary of the area of special flood hazard shall be plotted on such mapping utilizing the base flood elevations provided in the flood insurance study. This more detailed definition of the boundary of the base flood shall be utilized as best available data for the purposes of regulating the area of special flood hazard. If there are significant discrepancies between the boundary as shown on the FEMA maps and the topographic mapping available, the building official shall so advise the FEMA region IV office.

(d) ~~(10)~~ Where interpretation is needed as to the exact location of boundaries of the areas of special flood hazard (for example, where there appears to be a conflict between a mapped boundary and the natural grade of actual field conditions) the building official ~~Building Official~~ shall make the necessary interpretation, and shall utilize the most accurate topographic mapping available. The elevations published in the FEMA flood insurance study, as portrayed in the profile sheets, shall be the ruling reference for delineating the boundary of the floodplain. The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in this article ~~Article IX.~~ Property may not be excluded from the area of special flood hazard as a result of filling, unless a letter of map revision has been approved by FEMA.

(e) Where the building official has determined all or a portion of a property to be located outside of the flood hazard area, yet it is shown as being within the flood hazard area on the FEMA maps, the applicant shall be advised of the need to obtain a letter of map amendment or revision from the FEMA region IV office and shall be given an application packet utilizing forms provided by FEMA. While the property may be exempt from the requirements of this article, flood insurance

purchase will remain mandatory until FEMA authorizes a letter of map amendment or revision.

(f) ~~(11)~~ When base flood elevation data or floodway data have not been provided in accordance with this article §4A-92, then the building official shall obtain, review, and reasonably utilize any base flood elevation and floodway data available from a federal, state or other source, ~~in order to administer the provisions of §4A-94.~~ Base flood elevations may be estimated using topographic maps or scientific engineering methodology. Base flood elevation and floodway data shall be developed and provided for subdivision proposals and other proposed developments (including industrial parks, shopping centers, public facilities, and manufactured home parks and subdivisions) which are greater in size than the lesser of fifty (50) lots or five (5) acres. Such data shall be submitted to FEMA region IV office within thirty (30) days of receipt and acceptance by the community for review as a possible map revision.

(g) When a development project will cause a reconfiguration of the flood hazard area due to grading filling, channel alteration or relocation, development of a stormwater management system, or the excavation of lakes, the building official shall require the applicant to submit and obtain

approval from FEMA of a conditional letter of map revision.

Where a floodway is being impacted, this must be obtained prior to construction. Following completion of all or each phase of such a development, the building official shall require the applicant to submit to FEMA the as-built topographic and hydrologic information to obtain a final letter of map revision.

~~All records pertaining to the provisions of Article IX shall be maintained in the office of the Building Official and shall be open for public inspection.~~

(h) The office of the building official shall serve as the official map repository for FEMA flood insurance rate maps, flood boundary and floodway maps, and flood hazard boundary maps for the community, together with letters of map amendment (LOMAs) and letters of map revision (LOMRs). At least one copy of all current and superseded maps, LOMAs and LOMRs shall be maintained for public use and viewing.

(i) The office of the building official shall serve as the official repository for all town flood program documentation. All records pertaining to the provisions of this article shall be open for public inspection. Copies of all development permits and summary supporting documentation shall be filed by geographic area for ease of coordinating all floodplain development activities.

SECTION 13. That Section 4A-96, Appendix A, of the Town Code of the Town of Melbourne Beach, Florida, is hereby amended to read as follows:

§4A-96. VARIANCE PROCEDURES.

(a) Designation of variance and appeals board. The town Board of Adjustment is designated to hear and decide appeals and requests for variances from the requirements of these regulations. The Board of Adjustment, as established in § 7A-150, shall hear and decide appeals and requests for variances from the requirements of this article ~~Article IX~~. Unless otherwise provided herein, hearings, appeals and requests for variances hereunder shall be considered pursuant to the provisions of Article IX, Chapter 7A of this Land Development Code.

(b) The Board of Adjustment shall hear and decide appeals when it is alleged there is an error in any requirement, decision, or determination made by the building official ~~Building Official~~ in the enforcement or administration of this article ~~Article IX~~.

(c) Any person, with standing, aggrieved or adversely affected by the decision of the Board of Adjustment ~~or any taxpayer~~ may appeal such decision as provided in §§7A-150 *et seq.*

(d) Variances may be issued for the ~~repair or~~ reconstruction, rehabilitation, or restoration of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continuing designation as a historic structure and the variance is the minimum to preserve the historic character and design of the structure listed on the National Register of Historic Places or the State Inventory of Historic Places without regard to the procedures set forth in the remainder of this section, except for division (h)(1) and (4) of this section, and provided the proposed reconstruction, rehabilitation, or restoration will result in the structure losing its historical designation.

(e) In rendering decisions on such applications, the board ~~passing upon such Board of Adjustment~~ shall consider all technical evaluations, all relevant factors, all standards specified in other sections of this article ~~Article IX~~, and:

(1) The danger that materials may be swept onto other land to the injury of others;

(2) The danger to life and property due to flooding or erosion damage;

(3) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;

(4) The importance of the services provided by the proposed facility to the community;

(5) The necessity of the facility to a waterfront location, in the case of a functionally dependent facility;

(6) The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;

(7) The compatibility of the proposed use with existing and anticipated development;

(8) The relationship of the proposed use to the comprehensive plan ~~Comprehensive Plan~~ and floodplain management program for that area;

(9) The safety of access to the property in times of flood for ordinary 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 governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, cable television, and water systems, and streets and bridges.

(f) Upon consideration of the factors listed above and the purposes of this article ~~Article IX.~~, the board ~~Board~~ of

~~Adjustment~~ may render a decision and attach such conditions to the granting of variances by the board as it deems necessary to further the purposes of this article ~~Article IX~~.

(g) Structures in regulatory floodway. Variances shall not be issued within any designated floodway if any impact in flood conditions or increase in flood levels during the base flood discharge would result.

(h) Conditions for variances.

(1) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief; and in the instance of a historical building, a determination that the variance is the minimum necessary so as not to destroy the historic character and design of the building.

(2) Variances shall only be issued upon:

a. Showing ~~a showing~~ of good and sufficient cause;

b. Determination ~~a determination~~ that failure to grant the variance would result in exceptional hardship ~~to the applicant~~; and

c. Determination ~~a determination~~ that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary

public expense, create a nuisance nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.

(i) ~~(3)~~ Variance notification. Any applicant to whom a variance is granted shall be given written notice over the signature of the building official that:

(1) Specifying specifying the difference between the base flood elevation and the elevation to which the building is to be built;

(2) the issuance of a variance to construct a structure below the base flood elevation will result in increased premium rates for flood insurance; and stating that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.

(3) Such construction below the base flood level increases risks to life and property.

A copy of the notice shall be recorded by the town at the cost of the applicant with the Brevard County Clerk of the Court in the Public Records of Brevard County. The notice shall be recorded in a manner so that it appears in the chain of title of the affected parcel of land.

(j) (4) The building official will shall maintain a record ~~the records~~ of all variance appeal actions, including justification for their issuance. All variances shall be reported in the building official's biennial report submitted ~~and report any variances~~ to the Federal Emergency Management Agency ~~upon request~~.

(k) Historic structures. Variances may be issued for the repair or rehabilitation of "historic" structures - meeting the definition in these regulations - upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a "historic" structure.

(l) Special conditions. Upon consideration of the facts the Board of Adjustments may attach such conditions to the granting of variances, as it deems necessary to further the purposes of these regulations.

SECTION 14. That Section 4A-97, Appendix A, of the Town Code of the Town of Melbourne Beach, Florida, is hereby amended to read as follows:

§ 4A-97. WARNING AND DISCLAIMER OF LIABILITY. Repealed.

~~The degree of flood protection required by this Article is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by~~

~~man-made or natural causes. This article does not imply that land outside the areas of special flood hazard or uses permitted within such areas will be free from flooding or flood damages. This article shall not create liability on the part of the town or by any officer or employee thereof for any flood damages that result from reliance on this article or any administrative decision lawfully made thereunder.~~

SECTION 15. Severability/Interpretation Clause.

(a) In the event that any term, provision, clause, sentence or section of this Ordinance shall be held by a court of competent jurisdiction to be partially or wholly unenforceable or invalid for any reason whatsoever, any such invalidity, illegality, or unenforceability shall not affect any of the other or remaining terms, provisions, clauses, sentences, or sections of this Ordinance, and this Ordinance shall be read and/or applied as if the invalid, illegal, or unenforceable term, provision, clause, sentence, or section did not exist.

(b) In interpreting the provisions of this Ordinance, the following rules and symbols shall apply:

(1) Words underlined are additions to existing text.

(2) Words ~~stricken through~~ are deletions from existing text.

(3) Asterisks (* * *) indicates a deletion from the Ordinance of text existing in the Code of Ordinances. It is intended that the text in the Code of Ordinance denoted by the asterisks and not set forth in this Ordinance shall remain unchanged from the language existing prior to adoption of this Ordinance.

SECTION 16. Ordinances and Resolutions in Conflict. All ordinances or resolutions or parts thereof that may be determined to be in conflict herewith, except portions of the Comprehensive Plan, are hereby repealed.

SECTION 17. Effective Date. This Ordinance shall become effective upon adoption.

PASSED by the Town Commission of the Town of Melbourne Beach on first reading on the 15th day of April, 2009, and ADOPTED by the Town Commission of the Town of Melbourne Beach, Florida, on final reading on the 20th day of May, 2009.

TOWN OF MELBOURNE BEACH,
FLORIDA

By: _____
Rita A. Karpie, Mayor

ATTEST:

(TOWN SEAL)

Christina Hoffkins,
Town Clerk