

FLOOD DAMAGE PREVENTION LOCAL LAW

REGULAR PHASE OF THE NATIONAL FLOOD INSURANCE PROGRAM

SECTION 1.0

STATUTORY AUTHORIZATION AND PURPOSE

1.1 STATUTORY AUTHORIZATION

The People of the State of New York have in The New York State Constitution, Article 9, Section 2, delegated the responsibility to local governmental units to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry. Therefore, be it enacted by the Town of New Scotland of New York as follows:

1.2 STATEMENT OF PURPOSE

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

- (1) To protect human life and health;
- (2) To minimize expenditure of public money for costly flood control projects;
- (3) To minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- (4) To minimize prolonged business interruptions;
- (5) To minimize damage to public facilities and utilities such as water and gas mains, electric, telephone, and sewer lines, and streets and bridges located in areas of special flood hazard;
- (6) To help maintain a stable tax base by providing for the sound use and development of areas of special flood hazard so as to minimize future flood blight areas;

- (7) To insure that potential buyers are notified that property is in an area of special flood hazard; and,
- (8) To ensure that those who occupy the areas of special flood hazard assume responsibility for their actions.

1.3 METHODS OF REDUCING FLOOD LOSSES

In order to accomplish its purposes, this Local Law includes methods and provisions for:

- (1) Restricting or prohibiting uses which are dangerous to health, safety, and property due to water or erosion hazards, or which result in damaging increases in erosion or in flood heights or velocities;
- (2) Requiring that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;
- (3) Controlling the alteration of natural flood plains, stream channels, and natural protective barriers, which help accommodate or channel flood waters;
- (4) Controlling filling, grading, dredging, and other development which may increase flood damage; and,
- (5) Preventing or regulating the construction of flood barriers which will unnaturally divert flood waters or which may increase flood hazards in other areas.

SECTION 2.0 DEFINITIONS

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

"Appeal" means a request for a review by the Zoning Board of Appeals of any provision of this law or a request for a variance.

"Area of shallow flooding" - means a designated AO Zone on the Flood Insurance Rate Map (FIRM). The base flood depths range from one to three feet, a clearly defined channel does not exist, the path of flooding is unpredictable and indeterminate; and, velocity flow may be evident.

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

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

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

"Existing mobile home park or mobile home subdivision" means a parcel (or contiguous parcels) of land divided into two or more mobile home lots for rent or sale for which the construction of facilities for servicing the lot on which the mobile home is to be affixed (including, at a minimum, the installation of utilities, either final site grading or the pouring of concrete pads, and the construction of streets) is completed before the effective date of this local law.

"Expansion to an existing mobile home park or mobile home subdivision" means the preparation of additional sites by the construction of facilities for servicing the lots on which the mobile homes are to be affixed (including the installation of utilities, either final site grading or pouring of concrete or the construction of streets).

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

- (1) The overflow of inland or tidal waters and/or
- (2) The unusual and rapid accumulation of runoff of surface waters from any source.

"Flood Insurance Rate Map" (FIRM) means the official map on which the Federal Insurance Administration has delineated both the areas of special flood hazards and the risk premium zones applicable to the community.

"Flood Insurance Study" means the official report provided in which the Federal Insurance Administration has provided flood profiles, as well as the Flood Boundary-Floodway Map and the water surface elevation of the base flood.

"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.

"Mobile home" means a structure that is transportable in one or more sections, built on a permanent chassis, and designed to be used with or without a permanent foundation when connected to the required utilities. It does not include recreational vehicles or travel trailers.

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

"New mobile home park or mobile home subdivision" means a parcel (or contiguous parcels) of land divided into two or more mobile home lots for rent or sale for which the construction of facilities for

servicing the lot (including, at a minimum, the installation of utilities, either final site grading or the pouring of concrete pads and the construction of streets) is completed on or after the effective date of this local law.

"Start of construction" means the first placement of permanent construction of a structure (other than a mobile home) on a site, such as the pouring of slabs or footings or any work beyond the stage of excavation. 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 buildings, such as garages or sheds not occupied as dwelling units or not as part of the main structure. For a structure (other than a mobile home) without a basement or poured footings, the "start of construction" includes the first permanent framing or assembly of the structure or any part thereof on its piling or foundation. For mobile homes not within a mobile home park or mobile home subdivision, "start of construction" means the affixing of the mobile home to its permanent site. For mobile homes within mobile home parks or mobile home subdivisions, "start of construction" is the date on which the construction of facilities for servicing the site on which the mobile home is to be affixed (including, at a minimum, the construction of streets, either final site grading or the pouring of concrete pads, and installation of utilities) is completed.

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

"Substantial improvement" means any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure either:

- (1) before the improvement or repair is started, or
- (2) if the structure has been damaged and is being restored, 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.

The term does not, however, include either:

- (1) any project for improvement of a structure to comply with existing State or local health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions, or
- (2) any alteration of a structure listed on the National Register of Historic Places or a State Inventory of Historic Places.

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

Section 3.0
General Provisions

3.1 LANDS TO WHICH THIS LOCAL LAW APPLIES

This Local Law shall apply to all areas of special flood hazards within the jurisdiction of the Town of New Scotland.

3.2 BASIS FOR ESTABLISHING THE AREAS OF SPECIAL FLOOD HAZARD

The areas of special flood hazard identified by the Federal Insurance Administration in a scientific and engineering report entitled "The Flood Insurance Study for the Town of New Scotland, Albany County, New York", dated June 1, 1982, with accompanying Flood Insurance Rate Maps and Flood Boundary-Floodway Maps and any revision thereto is hereby adopted by reference and declared to be a part of this local law. The Flood Insurance Study is on file in the office of the Town clerk.

3.3 INTERPRETATION, CONFLICT WITH OTHER LAWS

In their interpretation and application, the provisions of this local law shall be held to be minimum requirements, adopted for the promotion of the public health, morals, safety, or the general welfare. Whenever the requirements of this local law are at variance with the requirements of any other lawfully adopted rules, regulations, or ordinances, the most restrictive, or that imposing the higher standards, shall govern.

3.6 VALIDITY

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

3.5 PENALTIES FOR NON-COMPLIANCE

No structure or land shall hereafter be constructed, located, extended, converted, or altered without full compliance with the terms of this local law and other applicable regulations. Violation of the provisions of this local law by failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with conditions) shall constitute a misdemeanor. Any person who violates this local law or fails to comply with any of its requirements shall, upon conviction thereof, be fined not more than \$500. or imprisoned for not more than 30 days or both for each violation and, in addition, shall pay all costs and expenses involved in the case. Nothing herein contained shall prevent the Town of New Scotland from taking such other lawful action as necessary to prevent or remedy a violation.

3.6 WARNING AND DISCLAIMER OF LIABILITY

The degree of flood protection required by this local law 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 local law does not imply that land outside the area of special flood hazards or uses permitted within such areas will be free from flooding or flood damages. This local law shall not create liability on the part of the Town of New Scotland, any officer or employee thereof

for any flood damages that result from reliance on this local law or any administrative decision lawfully made thereunder.

Section 4.0 Administration

4.1 ESTABLISHMENT OF DEVELOPMENT PERMIT

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

4.2 DESIGNATION OF THE

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

4.3 DUTIES AND RESPONSIBILITIES OF THE

Duties of the Building Inspector shall include, but not be limited to:

4.3-1 PERMIT REVIEW

- (1) Review all development permits to determine that the permit requirements of this local law have been satisfied.
- (2) Review all development permits to determine that all necessary permits have been obtained from those Federal, State or local governmental agencies from which prior approval is required.
- (3) Review all development permits to determine if the proposed

development is located in the floodway. If located in the floodway, assure that the encroachment provisions of Section 5.3(1) are met.

4.3-2 USE OF OTHER BASE FLOOD DATA

When base flood elevation data has not been provided in accordance with Section 3.2, BASIS FOR ESTABLISHING THE AREAS OF SPECIAL FLOOD HAZARD, the Building Inspector shall obtain, review, and reasonably utilize any base flood elevation data available from a Federal, State or other source, in order to administer Sections 5.2-1, SPECIFIC STANDARDS, Residential Construction, and 5.2-2, SPECIFIC STANDARDS, Nonresidential Construction.

4.3-3 INFORMATION TO BE OBTAINED AND MAINTAINED

- (1) Obtain and record the actual elevation (in relation to mean sea level) of the lowest floor (including basement) of all new or substantially improved structures, and whether or not the structure contains a basement.
- (2) For all new or substantially improved floodproofed structures:
 - (i) verify and record the actual elevation (in relation to mean sea level); and
 - (ii) maintain the floodproofing certifications required in Section 5.2-2(3).
- (3) Maintain for public inspection all records pertaining to the provisions of this local law.

4.3-4 ALTERATION OF WATERCOURSES

- (1) Notify adjacent communities and the New York State Department of Environmental Conservation prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Insurance Administration.
- (2) Require that maintenance is provided within the altered or relocated portion of said watercourse so that the flood carrying capacity is not diminished.

4.3-5 INSPECTION OF FIRM BOUNDARIES

Make interpretations where needed, as to the exact location of the boundaries of the areas of special flood hazards (for example, where there appears to be a conflict between a mapped boundary and actual field conditions). The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in Section 4.4.

4.4 VARIANCE PROCEDURE

4.4-1 APPEAL BOARD

- (1) The Zoning Bd. of Appeals as established by the Town of New Scotland shall hear and decide appeals and requests for variances from the requirements of this local law.
- (2) The Zoning Bd. of Appeals shall hear and decide appeals when it is alleged there is an error in any requirements, decision, or determination made by the Building Inspector in the enforcement or administration of this local law.
- (3) Those aggrieved by the decision of the Zoning Board of Appeals or any taxpayer, may appeal such decision to the Supreme Court, New York State, pursuant to the Civil Practice Law and Rules.
- (4) In passing upon such applications, the Zoning Board of Appeals shall consider all technical evaluations, all relevant factors, standards specified in other section of this local law and:
 - (i) the danger that materials may be swept onto other lands to the injury of others;
 - (ii) the danger of life and property due to flooding or erosion damage
 - (iii) the susceptibility of the proposed facility and contents to flood damage and the effect of such damage on the individual owner;
 - (iv) the importance of the services provided by the proposed facility to the community;
 - (v) the necessity to the facility of a waterfront location where applicable;
 - (vi) the availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;
 - (vii) the compatibility of the proposed use with existing and anticipated development;
 - (viii) the relationship of the proposed use to the comprehensive plan and flood plain management program of that area;
 - (ix) the safety of access to the property in times of flood for ordinary and emergency vehicles;

- (x) the expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site; and
 - (xi) the costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems and streets and bridges.
- (5) Upon consideration of the factors of Section 6.1(4) and the purposes of this local law, the Zoning Board of Appeals may attach such conditions to the granting of variances as it deems necessary to further the purposes of this local law.
- (6) The Zoning Board of Appeals shall maintain the records of all appeal actions including technical information and report any variances to the Federal Insurance Administration upon request.

4.4-2 CONDITION 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.
- (2) Variances shall only be issued upon:
 - (i) a showing of good and sufficient cause:
 - (ii) a determination that failure to grant the variance would result in exceptional hardship to the applicant; and
 - (iii) a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud or victimization of the public as identified in Section 4.4-1(4) or conflict with existing local laws or ordinances.

Section 5.0 Provisions of Flood Hazard Reduction

5.1 GENERAL STANDARDS

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

5.1-1 ANCHORING

- (1) All new construction and substantial improvements shall be anchored to prevent flotation, collapse, or lateral movement of the structure.
- (2) All mobile homes shall be anchored to resist flotation, collapse, or lateral movement by providing over-the-top and frame ties to ground anchors.

Special requirements shall be that:

- (i) over-the-top ties be provided at each of the four corners of the mobile home, with two additional ties per side at intermediate locations, with mobile homes less than 50 feet long requiring one additional tie per side;
- (ii) frame ties be provided at each corner of the home with five additional ties per side at intermediate points, with mobile homes less than 50 feet long requiring four additional ties per side;
- (iii) all components of the anchoring system be capable carrying a force of 4,800 pounds; and,
- (iv) any additions to the mobile home be similarly anchored.

5.1-2 CONSTRUCTION MATERIALS AND METHODS

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

5.1-3 UTILITIES

- (1) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system;
- (2) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharge from the systems into flood waters; and
- (3) On-site waste disposal systems shall be located to avoid impairment to them or contamination from the during flooding.

5.1-4 SUBDIVISION PROPOSALS

- (1) All subdivision proposals shall be consistent with the need to minimize flood damage;
- (2) All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage;
- (3) All development proposals shall have adequate drainage provided to reduce exposure to flood damage; and,
- (4) Base flood elevation data shall be provided for subdivision proposals and other proposed development which contain at least 50 lots or 5 acres (whichever is less).

5.2 SPECIFIC STANDARDS

In all areas of special flood hazards where base flood elevations data have been provided as set forth in Section 3.2, BASIS FOR ESTABLISHING THE AREAS OF SPECIAL FLOOD HAZARD or in Section 4.3-2, Use of Other Base Flood Data, the following standards are required:

5.2-1 RESIDENTIAL CONSTRUCTION

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

5.2-2 NONRESIDENTIAL CONSTRUCTION

New construction and substantial improvement of any commercial, industrial or other nonresidential structure shall either have the lowest floor, including basement, elevated to the level of the base flood elevation; or, together with attendant utility and sanitary facilities, shall:

- (1) be floodproofed so that below the base flood level the structure is watertight with walls substantially impermeable to the passage of water;
- (2) have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy; and
- (3) be certified by a registered professional engineer or architect that the standards of this subsection are satisfied. Such certifications shall be provided to the official as set forth in Section 4.2.

5.2-3 MOBILE HOMES

- (1) Mobile homes shall be anchored in accordance with Section 5.1-1(2).

- (2) For new mobile home parks and mobile home subdivisions; for expansions to existing mobile home parks and mobile home subdivisions; for existing mobile home parks and mobile home subdivisions where the repair, reconstruction or improvement of the streets, utilities and pads equals or exceeds 50 percent of value of the streets, utilities and pads before the repair, reconstruction or improvement has commenced; and for mobile homes not placed in a mobile home park or mobile home subdivision, require that:
 - (i) stands or lots are elevated on compacted fill or on pilings so that the lowest flood of the mobile home will be at or above the base flood level;
 - (ii) adequate surface drainage and access for a hauler are provided; and,
 - (iii) in the instance of elevation on pilings, that:
 - lots are large enough to permit steps,
 - piling foundations are placed in stable soil no more than ten feet apart, and
 - reinforcement is provided for pilings more than six feet above the ground level.
- (3) No mobile home shall be placed in a floodway, except in an existing mobile home park or an existing mobile home subdivision.

5.3 FLOODWAYS

Located within areas of special flood hazard established in Section 3.2 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 apply:

- (1) Prohibit encroachments, including fill, new construction, substantial improvements, and other development unless a technical evaluation demonstrates that encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge.
- (2) Prohibit the placement of any mobile homes, except in an existing mobile home park or existing mobile home subdivision.
- (3) In all areas of special flood hazard in which base flood elevation data has been provided and no floodway has been designated, the cumulative effects of any proposed development, when confined with all other existing and anticipated development, shall not increase the water surface elevation of the base flood more than one foot at any point.

(Complete the certification in the paragraph which applies to the filing of this local law and strike out the matter therein which is not applicable.)

1. (Final adoption by local legislative body only.)

I hereby certify that the local law annexed hereto, designated as local law No. 2 of 19 82
~~County~~
of the ~~City~~ City of New Scotland was duly passed by the Town Board
~~Town~~ ~~Village~~ (Name of Legislative Body)
on November 24, 19 82 in accordance with the applicable provisions of law.

2. (Passage by local legislative body with approval or no disapproval by Elective Chief Executive Officer, * or repassage after disapproval.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 19_____
County
of the ~~City~~ City of _____ was duly passed by the _____
~~Town~~ ~~Village~~ (Name of Legislative Body)
on _____ 19_____, not disapproved
and was approved _____ by the _____
repassed after disapproval Elective Chief Executive Officer *
and was deemed duly adopted on _____ 19_____, in accordance with the applicable provisions of law.

3. (Final adoption by referendum.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 19_____
County
of the ~~City~~ City of _____ was duly passed by the _____
~~Town~~ ~~Village~~ (Name of Legislative Body)
on _____ 19_____, not disapproved
and was approved _____ by the _____
repassed after disapproval Elective Chief Executive Officer *
on _____ 19_____. Such local law was submitted to the people by reason of a
mandatory permissive referendum, and received the affirmative vote of a majority of the qualified electors voting
general
thereon at the special election held on _____ 19_____, in accordance with the applicable provisions of law.

4. (Subject to permissive referendum, and final adoption because no valid petition filed requesting referendum.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 19_____
County
of the ~~City~~ City of _____ was duly passed by the _____
~~Town~~ ~~Village~~ (Name of Legislative Body)
on _____ 19_____, not disapproved
and was approved _____ by the _____
repassed after disapproval Elective Chief Executive Officer *
on _____ 19_____. Such local law being subject to a permissive referendum and no
valid petition requesting such referendum having been filed, said local law was deemed duly adopted on
_____ 19_____, in accordance with the applicable provisions of law.

(City local law concerning Charter revision proposed by petition.)

I hereby certify that the local law annexed hereto, designated as local law No. of 19..... of the City of..... having been submitted to referendum pursuant to the provisions of § 36 of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of such city voting thereon at the special election held on 19..... became operative.

(County local law concerning adoption of Charter.)

I hereby certify that the local law annexed hereto, designated as Local Law No. of 19..... of the County of, State of New York, having been submitted to the Electors at the General Election of November, 19, pursuant to subdivisions 5 and 7 of Section 33 of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of the cities of said county as a unit and of a majority of the qualified electors of the towns of said county considered as a unit voting at said general election, became operative.

(If any other authorized form of final adoption has been followed, please provide an appropriate certification.)

I further certify that I have compared the preceding local law with the original on file in this office and that the same is a correct transcript therefrom and of the whole of such original local law, and was finally adopted in the manner indicated in paragraph 1..... above.

Corinne Cossac

~~CLERK OF THE COUNTY~~
~~OFFICE~~
Corinne Cossac, Town Clerk

Date: November 30, 1982

(Seal)

(Certification to be executed by County Attorney, Corporation Counsel, Town Attorney, Village Attorney or other authorized Attorney of locality.)

STATE OF NEW YORK
COUNTY OF Albany.....

I, the undersigned, hereby certify that the foregoing local law contains the correct text and that all proper proceedings have been had or taken for the enactment of the local law annexed hereto.

Frederick C. Hunt

Signature

Town Attorney