

PENNINGTON COUNTY FLOOD DAMAGE PREVENTION ORDINANCE

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SECTION 100 - STATUTORY AUTHORIZATION, FINDINGS OF FACT, TITLE, PURPOSE AND METHOD

101. STATUTORY AUTHORIZATION: South Dakota Codified Laws, Section 7-18A-2, 7-18-14, 7-18-15 and 11-2-11. Be it ordained by the Board of County Commissioners of Pennington County as follows:

102. FINDINGS OF FACT: The areas of special flood hazard of the County are subject to periodic inundation which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety and general welfare. The flood losses are caused by the cumulative effect of obstructions in areas of special flood hazards which increase flood heights and velocities, and when inadequately anchored, damage uses in other areas. Uses that are inadequately floodproofed, elevated or otherwise protected from flood damage also contribute to the flood loss.

103. TITLE: This Ordinance shall be known as the Pennington County Flood Damage Prevention Ordinance.

104. PURPOSE: 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:

- A. To protect human life and health;
- B. To minimize expenditure of public money for costly flood control projects;
- C. To minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- D. To minimize prolonged business interruptions;
- E. To minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets and bridges located in areas of special flood hazard;
- F. To help maintain a stable tax base by providing for the second use and development of areas of special flood hazard so as to minimize future flood blight areas;
- G. To ensure that potential buyers are notified that property is in an area of special flood hazard; and,
- H. To ensure that those who occupy the areas of special flood hazard assume responsibility for their actions.

105. METHODS OF REDUCING FLOOD LOSSES: In order to accomplish its purpose, this Ordinance includes methods and provisions for:

- A. 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;
- B. Requiring that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;
- C. Controlling the alteration of natural flood plains, stream channels, and natural protective barriers, which help accommodate or channel flood waters;
- D. Controlling filling, grading, dredging and other development which may increase flood damage; and,
- E. Preventing or regulating the construction of flood barriers which will unnaturally divert flood waters or which may increase flood hazards in other areas.

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SECTION 200 – DEFINITIONS

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

AREA OF SPECIAL FLOOD HAZARD: the land in the County subject to a one percent or greater chance of flooding in any given year.

BASE FLOOD (also termed the "100 year flood"): the flood having a one percent chance of being equaled or exceeded in any given year

BOARD: the Pennington County Board of Commissioners

BOARD OF ADJUSTMENT: the entity designated by the Pennington County Board of Commissioners to hear and decide variances

COMMISSION: the Pennington County Planning Commission

COUNTY: the unincorporated areas of Pennington County

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

DIRECTOR: the Pennington County Planning Director

EXISTING MANUFACTURED HOME PARK OR SUBDIVISION: a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, either final site grading or the pouring of concrete pads, and the construction of streets) were completed before February 3, 1982

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

FLOOD OR FLOODING: 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 or runoff of surface waters from any source

FLOOD BOUNDARY AND FLOODWAY MAP (FBFM): the official map on which the Federal Emergency Management Agency has delineated both the areas of special flood hazard and the floodway boundaries applicable to the County

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

FLOOD INSURANCE STUDY: the official report provided by the Federal Emergency Management Agency that includes flood profiles, the Flood Boundary and Floodway Map, and the water surface elevation of the base flood

FLOODWAY (also termed "regulatory floodway"): the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot

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HISTORIC STRUCTURE: any structure that is:

1. 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;
2. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
3. Individually listed on the state inventory of historic places which has been approved by the Secretary of the Interior; or
4. Individually listed on the local inventory of historic places which has been certified either:
 - a. By an approved state program as determined by the Secretary of the Interior; or
 - b. Directly by the Secretary of the Interior

LOWEST FLOOR: the lowest flood of the lowest enclosed area (including basement); an unfinished enclosure, usable solely for parking of vehicles, building access or storage, is not considered a building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this Ordinance

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

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

NEW CONSTRUCTION: structures for which the "start of construction" commenced on, or after, February 3, 1982

NEW MANUFACTURED HOME PARK OR SUBDIVISION: a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on, or after, February 3, 1982

PLANNING DEPARTMENT: the Pennington County Planning Department

RECREATIONAL VEHICLE: a vehicle which is:

1. Built on a single chassis;
2. 400 square feet or less when measured at the largest horizontal projection;
3. Designed primarily not for use as a permanent dwelling but as a temporary living quarters for recreational, camping, travel or seasonal use

START OF CONSTRUCTION: the commencement of development as defined by this Ordinance

STRUCTURE: anything constructed, erected or placed, the use of which requires location on the ground, with the exception of fences erected for agricultural purposes

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SUBSTANTIAL DAMAGE: damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred

SUBSTANTIAL IMPROVEMENT: any repair, reconstruction, rehabilitation, addition or other 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 purpose of this definition, "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor or other structural part of the building commences, whether or not 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 correct existing violations of state or local health, sanitary or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions; or
2. any alteration of a "historic structure", provided that the alteration will not preclude the structure's continued designation as a "historic structure"

VARIANCE: a grant of relief from the requirements of this Ordinance which permits development in a manner that would otherwise be prohibited by this Ordinance

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SECTION 300 - GENERAL PROVISIONS

301. JURISDICTION: This Ordinance applies to all areas of special flood hazard within the County.

302. BASIS FOR ESTABLISHING THE AREAS OF SPECIAL FLOOD HAZARD: The areas of special flood hazard are identified by the Federal Emergency Management Agency in a scientific and engineering report entitled, "The Flood Insurance Study for Pennington County, South Dakota", dated March 19, 1990, and accompanying Flood Insurance Rate Maps (FIRM's) and "The Flood Insurance Study for Pennington County, South Dakota", dated May 20, 1996, and accompanying Flood Insurance Rate Maps (FIRM's) revising Community Panel Numbers 460064 0758, 460064 0766, and 460064 0767. The Flood Insurance Study and FIRM maps are hereby adopted by reference and declared to be part of this Ordinance, and are on file at the Planning Department.

303. COMPLIANCE: After February 3, 1982, no structure or land in designated areas of special flood hazard shall be constructed, located, extended, converted or altered without full compliance with the terms of this Ordinance and other applicable regulations.

304. ABROGATION AND GREATER RESTRICTION: This Ordinance is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this Ordinance and another Ordinance, easement, covenant or deed restriction conflict or overlap, whichever imposes the most restrictive provisions shall control the land use.

305. INTERPRETATION: In the interpretation and application of this Ordinance, all provisions shall be:

A. Considered as minimum requirements;

B. Liberally construed in favor of the governing body; and

C. Deemed neither to limit nor repeal any other powers granted under State law.

306. WARNING AND DISCLAIMER OF LIABILITY: The degree of flood protection required by this Ordinance 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 Ordinance 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 damage. This Ordinance shall not create liability on the part of the County, any officer or employee thereof, or the Federal Emergency Management Agency for any flood damages that result from reliance on this Ordinance or any administrative decision lawfully made thereunder.

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SECTION 400 - ADMINISTRATION

401. DESIGNATION OF THE FLOOD PLAIN MANAGEMENT OFFICE: The Director is hereby appointed to administer and implement this Ordinance by granting or denying flood plain development permits in accordance with its provisions.

402. FLOOD PLAIN DEVELOPMENT PERMIT: Before the start of construction or development within any area of special flood hazard, as defined herein, a flood plain development permit application shall be submitted for approval to the Director, who shall issue the permit only if the proposal conforms to the requirements of this Ordinance. Application for flood plain development permits shall be made on forms furnished by the Planning Department.

403. INFORMATION REQUIRED FOR FLOOD PLAIN DEVELOPMENT PERMIT: A flood plain development permit application may include, but not be limited to: plans 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. Specifically, the following information is required:

- A. Elevation in relation to mean sea level of the lowest floor, including basement, of all structures.
- B. Elevation in relation to mean sea level to which any structure has been floodproofed.
- C. Certification by a registered professional engineer or architect that the floodproofing methods for any non-residential structure meet the floodproofing criteria described in this Ordinance.
- D. Description of the extent to which any watercourse will be altered or relocated as a result of a proposed development. In the event of such alteration or relocation, the applicant must certify that the flood carrying capacity of the affected watercourse is not diminished.

404. FLOOD PLAIN MANAGEMENT RESPONSIBILITIES OF THE DIRECTOR:

A. The Director shall:

- 1. Review all flood plain development permit applications to determine that the requirements of this Ordinance have been met, and if so, issue the permit;
- 2. Determine that all necessary permits have been obtained from those federal, state and local government agencies from which prior approval is required before a flood plain development permit can be issued. Copies of such permits shall be attached to the flood plain development permit;
- 3. Maintain for public inspection all records pertaining to the provisions of this Ordinance;
- 4. 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;
- 5. For all new or substantially improved floodproofed structures, obtain and record the actual elevation in relation to mean sea level to which the structure has been floodproofed and record the floodproofing certifications as required by this Ordinance;
- 6. Maintain records of all variances including technical information and report such to the Federal Emergency Management Agency.

B. Use of Available Flood Data. When base flood elevation data has not been provided in accordance with Section 302, the Director shall obtain, review and reasonably utilize any base flood elevation and flood way data available from a federal, state or other source, as criteria for requiring that development in areas of special flood hazard meets the requirements of this Ordinance.

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C. Watercourse Alteration. In the event that a watercourse is proposed to be altered so as to affect the base flood carrying capacity, the Director shall notify affected communities and the South Dakota Division of Emergency and Disaster Service prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency. The Director shall also require that maintenance is provided within the altered or relocated portion of said watercourse so that the flood carrying capacity is not diminished.

D. Interpretation of Boundaries. The Director shall make interpretations, where needed, as to the exact location of the boundaries of the areas of special flood hazard. Such an example would be where there appears to be a conflict between a mapped boundary and actual field conditions or previous pertinent flood experience.

E. Evacuation Plan. The Director shall see that a plan for the notification and evacuation in a flood emergency of residents of all manufactured home parks or subdivisions located within flood prone areas is developed and filed with, and approved by, the appropriate community emergency management authorities.

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SECTION 500 - PROVISIONS FOR FLOOD HAZARD REDUCTION

501. GENERAL STANDARDS: In all areas of special flood hazards, the following standards shall apply:

A. Anchoring:

1. All new construction and substantial improvements shall be anchored to prevent flotation, collapse, or lateral movement of the structure, and shall be capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy generated by the 100-year flood. (If the structure is elevated on fill a minimum of one foot (1') above the base flood level, the anchoring requirement is satisfied.)

2. All manufactured homes to be placed within an area of special flood hazard shall be installed using methods and practices which minimize flood damage. For the purposes of this requirement, manufactured homes must be anchored to resist flotation, collapse, or lateral movement. This requirement is in addition to applicable state and local anchoring requirements for resisting wind forces. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors, as specifically listed below.

Other anchoring techniques that are as effective, or more effective, in resisting flood forces as over-the-top or frame ties may also be employed (refer to FEMA manual "Manufactured Home Installation in Flood Hazard Areas", published 9/85, and its successors for guidance on other anchoring techniques).

a. Over-the-top ties shall be provided at each of the four corners of the manufactured home, with two additional ties per side at intermediate locations, with homes less than 50 feet long requiring only one additional tie per side; or,

b. Frame ties shall be provided at each corner of the manufactured home with five additional ties per side at intermediate locations, with homes less than 50 feet long requiring only four additional ties per side;

c. All components of the anchoring system shall be capable of carrying a force of 4,800 pounds; and,

d. Any additions to the manufactured home shall be similarly anchored.

3. A registered professional engineer shall develop and/or review any designs, specifications and plans for anchoring, and shall certify that the design and methods of anchoring are in accordance with the applicable provisions of this Ordinance and are adequate to withstand flood forces associated with the base flood.

B. Construction Materials and Methods: All new construction and substantial improvements shall be construed using methods, practices and materials that minimize flood damage.

C. 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 the flood waters.

3. On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

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

D. Subdivision Proposals: (a proposal for dividing land into two or more parts for the purpose of development):

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1. Shall be designed with features that recognize the need to minimize flood damage;
2. Shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize flood damage;
3. Shall have adequate drainage provided to minimize exposure to flood damage;
4. For all new subdivision proposals and other proposed developments (including proposals for manufactured home parks and subdivisions) greater than 50 lots or 5 acres, whichever is the lesser, base flood elevation data shall be prepared and certified by a registered professional engineer or taken from recognized base flood elevation data, and the source of the base flood elevation data used by the registered land surveyor in preparing and certifying the proposed plat shall be clearly identified on the plat.
5. For all plats of land located in areas of special flood hazard, appropriate notations indicating possible flood hazards shall be placed on the plat prepared and certified by a registered land surveyor.

502. **SPECIFIC STANDARDS:** In all areas of special flood hazard where base flood elevation data has been provided from any source, the following standards are required:

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

B. Non-residential Construction. New construction and substantial improvement of any commercial, industrial or other non-residential structure shall either have the lowest floor including basement, elevated to the level of the base flood or, together with attendant utility and sanitary facilities, shall be floodproofed using either wet floodproofing or dry floodproofing methods as specified in this Ordinance.

1. Dry Floodproofing:

- a. The structure must be floodproofed so that below the base flood level the structure is watertight with walls substantially impermeable to the passage of water; and
- b. The structure must have structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy generated by the 100-year flood.

2. Wet Floodproofing:

- a. Fully enclosed areas below the lowest floor that are subject to flooding shall be designed to automatically equalize flood forces on exterior walls by allowing for the entry and exit of floodwaters.
- b. Designs for meeting this requirement must meet or exceed the following minimum criteria: A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided. The bottom of all openings shall be no higher than one foot above grade. Openings may be equipped with screens, louvers, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.
3. A registered professional engineer or architect shall develop and/or review structural design, specifications and plans for the construction, and shall certify that the design and methods of construction are in accordance with accepted standards of practice for meeting the applicable provisions of this Ordinance and are adequate to withstand flood forces associated with the base flood.

C. Manufactured Homes.

1. Manufactured homes shall be anchored in accordance with Section 501A.
2. All manufactured homes, or those to be substantially improved, shall conform to the following requirements:

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a. Manufactured homes that are placed or substantially improved on a site: (i) outside of a manufactured home park or subdivision, (ii) in a new manufactured home park or subdivision, (iii) in an expansion to an existing manufactured home park or subdivision, or (iv) in an existing manufactured home park or subdivision on which a manufactured home has incurred "substantial damage" as the result of a flood, be elevated on a permanent foundation such that the lowest floor of the manufactured home is elevated to or above the base flood elevation and be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement.

b. Manufactured homes to be placed or substantially improved on sites in existing manufactured home parks or subdivisions that are not subject to the provisions in (a) above be elevated so that either: (I) the lowest floor of the manufactured home is at or above the base flood elevation, or (ii) the manufactured home chassis is supported by reinforced piers or other foundation elements, of at least equivalent strength, that are no less than 36 inches in height above grade and be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement.

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SECTION 600 - FLOODWAYS

Located within areas of special flood hazard are areas designed 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:

A. Encroachments, including fill, new construction, substantial improvements and other development, are prohibited unless certification by a registered professional engineer or architect is provided demonstrating that encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge.

B. If the above requirement is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of this Ordinance.

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SECTION 700 - VARIANCES

701. PURPOSE OF A VARIANCE: A variance is a procedure whereby relief may be granted from specific requirements of this Ordinance. The Board of Adjustment shall hear and decide all variance requests. Those aggrieved by the decision of the Board of Adjustment, or any taxpayer, may appeal such decision to the Circuit Court.

702. PROCEDURES:

A. Application

1. Variance application forms shall be obtained from the Planning Department. An application shall be accompanied by such site plans, drawings and technical data as are necessary for the Board of Adjustment to make a determination on the request.
2. A good faith effort must be made by the applicant to notify all owners (including contract for deed buyers) of land laying within five hundred feet (500'), inclusive of right-of-way, of the outer boundaries of the property involved in the request. The list of landowners to be notified shall be prepared by the office of the Director of Equalization. The Planning Department shall provide the applicant with "Notice of Hearing" forms for this purpose, and the notices are to be sent by the applicant to all parties on the aforementioned list by certified mail with return receipt requested no less than one (1) week prior to the public hearing on the request held by the Board of Adjustment.
3. The Planning Department shall provide to the applicant a sign which is to be posted on the property involved in the variance request in a location with the greatest public visibility. Said sign shall be so placed no less than ten (10) days prior to the date of the public hearing before the Board of Adjustment.

B. Public Hearing

Upon receipt of an application and fee, a public hearing shall be held on the request in a location to be prescribed by the Board of Adjustment. Said hearing is to be held not less than ten (1) days after publication of notice of the time and place of such hearing in a legal newspaper of general circulation in the area affected. Approval of a variance request shall require a 3/4 vote of the full Board of Adjustment.

703. CONSIDERATIONS: The Board of Adjustment shall consider all technical evaluations, all relevant factors, standards specified in other sections of this Ordinance and:

- A. the danger that materials may be swept onto other lands to the injury of others;
- B. the danger to life and property due to flooding or erosion damage;
- C. the susceptibility of the proposed development and its contents to flood damage and the effect of such damage on the individual owner;
- D. the importance of the services provided by the proposed development to the community;
- E. the availability of alternative locations for the proposed development which are not subject to flooding or erosion damage;
- F. the compatibility of the proposed development with existing and anticipated development;
- G. the relationship of the proposed development to the comprehensive plan and flood plain management program of the area;
- H. the safety of access to the proposed development in times of flood for ordinary and emergency vehicles;
- I. the expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters expected at the site of the proposed development; and,

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J. 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.

704. CONDITIONS FOR GRANTING VARIANCES: Certain conditions shall be met prior to approval of a variance:

A. Generally, variances may be issued for development on a lot of one-half acre or less in size, contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing the foregoing considerations have been taken into account.

B. Variances may be issued for the repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.

C. Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.

D. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief, and upon:

1. A showing of good and sufficient cause;

2. A determination that failure to grant the variance would result in exceptional hardship to the applicant; and,

3. A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public as identified in the foregoing considerations or conflict with existing local laws or ordinances.

E. Any applicant to whom a variance is granted shall be given written notice of the specific action taken and of the fact that the cost of flood insurance will be commensurate with the increased risk resulting from the varied requirement(s).

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SECTION 800 – VIOLATIONS AND PENALTIES

A violation of any of the provisions of this Ordinance is punishable by a fine not exceeding one hundred dollars, or by imprisonment for a period not exceeding thirty days, or by both such fine and imprisonment. Each day of such violation shall constitute a separate violation.