**Chapter 9**

# FLOODPLAIN MANAGEMENT*



*Editor's note-Chapter 9, Arts. I-III, §§ 9-1-9-9, 9-26-9-28, 9-46-9-53, was deleted as being superseded by the provisions c: an ordinance adopted Dec. 7, 1992, which has been included as a new Ch. 9 to read as herein set out. Former Ch. 9, Arts. I-III pertained to similar subject matter and derived from an ordinance adopted Sept. 21, 1987, §§ 1.3, 2.1, 3.1-3.7, 4.1-4.3, 5.1-:..7 6.4, 7.1-7.6. Cross references-Flood and erosion control board, § 2-171 et seq.; buildings and building regulations, Ch. 6; planning, Ch. 1.: State law reference-Flood control and beach erosion, G.S. § 25-69 et seq.

DIVISION 1. GENERALLY

**Sec. 9.1. Statement of purpose.**

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

(1) Restrict or prohibit 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) Require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;

(3) Control the alteration of natural floodplains, stream channels, and natural protective barriers which are involved in the accommodation of flood waters;

(4) Control filling, grading, dredging and other development which may increase erosion or flood damage, and;

(5) Prevent or regulate the construction of flood barriers which *will* unnaturally divert flood waters or which may increase flood hazards to other lands.

(Ord. of 12-7-92, § 1.3)

**Sec. 9-2. Definitions.**

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

*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 loadbearing wall other than a fire wall. Any walled and roofed addition which is connected by a fire wall or is separated by independent perimeter loadbearing walls is a new structure.

*Appeal* means a request for a review of the town engineer's interpretation of any 'provision of this chapter or a request for a variance.

*Area of special flood hazard* is the land in the floodplain within a community subject to one (1) percent or greater chance of flooding in any given year.

*Base flood* means the flood having a one-percent chance of being equaled or exceeded in any given year.

*Basement* means, that portion of a building having its floor subgrade (below ground level) on all sides.

*Breakaway wall* means a wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces without causing damage to the elevated portion of the building or the supporting foundation system.

*Building* means any structure built for support, shelter, or enclosure for any occupancy or storage.

*Coastal high hazard area* means the area subject to high velocity waters caused by, but not limited to, hurricane wave wash. The area is designated on FIRM as Zone V1-30, VE or V.

*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 equipment or materials.

*Elevated building* means a nonbasement 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.

*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 water;

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

*Flood insurance rate map (FIRM)* means an official map of a community, on which the Federal Emergency Management Agency has delineated areas of special flood hazard, floodways and risk premium zones applicable to the community.

*Flood insurance study (FIS)* is the official report by the Federal Emergency Management Agency which contains flood profiles 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 (1) foot.

*Floor* means the top surface of an enclosed area in a building (including basement) i.e., top of slab in concrete slab construction or top of wood flooring in wood frame construction. The term does not include the floor of a garage used solely for parking vehicles.

*Functionally dependent facility* means a facility which cannot be used for its intended purpose unless it is located in close proximity to water, such as docking or port facility necessary for the loading and unloading of cargo or passengers, shipbuilding, ship repair or seafood processing facilities. The term does not include longterm storage, manufacture, sales, or service facilities.

*Highest adjacent grade* means the highest natural elevation of the ground surface, prior to construction, next to the proposed walls of a structure.

*Lowest floor* means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage, in an area other than a basement area is not considered a building's lowest floor.

*Manufactured home* means a structure, transportable in one (1) or more sections, which is built on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities. The term also includes park trailers, travel trailers, and similar transportable structures placed on a site for one hundred eighty (180) consecutive days or longer and intended to be improved property.
*Manufactured home park or subdivision A*
parcel, or contiguous parcels, or land divided into two (2) or more manufactured home lots for rent or sale.

*Mean sea level* means, for purposes of the National Flood Insurance Program, the National Geodetic Vertical Datum (NGVD) of 1929 or other datum, to which base flood elevations shown on a community's Flood Insurance Rate Map are referenced.

*National Geodetic Vertical Datum (NGVD)* as corrected in 1929 is a vertical control used as a reference for establishing varying elevations within the floodplain.

*New construction* means structures (or improvements to such structures) for which the "start of construction" commenced on or after the effective date of the ordinance (September 15, 1978).

*Sand dunes* means naturally occurring accumulations of sand in ridges or mounds landward of the beach.

*Start of construction* (For other than new construction or substantial improvements under the Coastal Barrier Resources Act (P.L. 97-348)), includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, or improvement was within one hundred eighty (180) days of the permit date. The actual start means the first placement of permanent construction of a structure (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 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 buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

*Structure* means a walled and roofed building that is principally above ground, a manufactured home, a gas or liquid storage tank, or other manmade facilities or infrastructures.

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

*Substantial improvement* means any combination of repairs, reconstruction, alteration, or improvements to a structure, taking place during a one-year period, in which the cumulative cost equals or exceeds **fifty** (50)

percent of the current market value of the structure. The market value of the structure shall be based on the latest town assessment adjusted to current value by a factor determined in the latest issue of the Marshall Valuation Services Comparative Cost Multiples published by Marshall and Swift. In the event the aforementioned publication is no longer available an alternative factor may be developed by the town engineer's office. 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 any project for improvement of a structure required to comply with existing health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions.

*Variance* is a grant of relief from the requirements of this chapter which permits construction in a manner otherwise prohibited by this chapter where specific enforcement would result in unnecessary hardship.

*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. (Ord. of 12-7-92, § 2.1; Ord. of 9-26-95)

**Sec. 9-3. Land to which this chapter applies.**

This chapter shall apply to all areas of special flood hazard within the jurisdiction of the town. (Ord. of 12-7-92, § 3.1)

**Sec. 9-4. 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 dated November 4, 1992 with the Floodway and Flood Insurance Rate Maps revised to November 4, 1992, and August 2, 1995, and any subsequent revision thereto, are adopted by reference and declared to be a part of this chapter.
(Ord. of 12-7-92, § 3.2; Ord. of 9-26-95)

**Sec. 9-5. Floodplain management.**

A flood hazard area permit shall be required in conformance with the provisions of this chapter prior to the commencement of any development activities.
(Ord. of 12-7-92, § 3.3)

**Sec. 9-6. Compliance.**

No structure or land shall hereafter be located, extended, converted or structurally altered without full compliance with the terms of this chapter and other applicable regulations.
(Ord. of 12-7-92, § 3.4)

**Sec. 9-7. Abrogation and greater restrictions.**

This chapter is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this chapter and another conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

**Sec. 9-8. Interpretation.**

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

(1) Considered as minimum requirements;
(2) Liberally construed in favor of the governing body, and;
(3) Deemed neither to limit nor repeal any other powers granted under state statutes.

(Ord. of 12-7-92, § 3.6)

**Sec. 9-9. Warning and disclaimer of liability.**

The degree of flood protection required by this chapter is considered reasonable for regulatory purposes and is based on scientific and engineering consideration. Larger floods can and will occur on rare occasions. Flood heights may be increased by .manmade or natural causes. This chapter 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 chapter 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 chapter or any administrative decision lawfully made thereunder.
(Ord. of 12-7-92, § 3.7)

**Secs. 9-10-9-20. Reserved.**

## DIVISION 2. ADMINISTRATION

### Sec. 9-21. Designation of administrator.

The town engineer is hereby designated to administer and implement the provisions of this chapter. The town engineer shall have the responsibility and authority to grant or deny permit applications for development in special flood hazard areas in accordance with the provisions of this chapter. The board of selectmen may appoint deputies to assist and act for the town engineer. (Ord. of 12-7-92, § 4.1)

### Sec. 9-22. Flood hazard area permit.

Development, including new construction, substantial improvement and the placement of prefabricated buildings, may be made within special flood hazard areas only after a flood hazard area permit therefore has been obtained. Application for a flood hazard area permit shall be made to the town engineer on forms furnished for that purpose by the town engineer and shall include at least a) plans in duplicate drawn to scale showing the nature, location, dimensions and elevations of the area in question, b) existing or proposed structures, fill, storage of materials and drainage facilities, and c) the location of the foregoing. The following is required in connection with all applications:

(1) Elevation in relation to-mean sea level, of the lowest floor (including basement) of all structures;
(2) Elevation in relation to mean sea level to which any structure has been or will be floodproofed;
(3) Certification by a registered professional engineer or architect that the floodproofing methods for any nonresidential structure meet the floodproofing criteria in .section 9-33(9)(2);
(4) Description of the extent to which any watercourse will be altered or relocated as a result of proposed development; and notification of adjacent communities, Inland Wetlands Agency and the Department of Environmental Protection, Water Resources Unit prior to any alteration or relocation of a watercourse, and submit such notification to the Federal Emergency Management Agency
(5) Plans for any walls to be used to enclose space below the base flood elevation.

(Ord. of 12-7-92; § 4.2)

### Sec. 9-23. Duties and responsibilities of the town engineer.

Duties and responsibilities of the town engineer in the administration of this chapter shall include but not be limited to the following:

(1) ***Permit application review:***

a. Review all flood hazard area permit applications to determine that the requirements of this chapter have been satisfied;
b. Review all such permit applications to determine that all other necessary permits have been received from those federal, state or town governmental agencies from which prior approval is required; and
c. Review plans for walls to be used to enclose space below the base flood level in accordance with section 9-34.

(2) *Other base flood data:* When- base flood elevation data is not provided on the flood insurance rate map, the town engineer 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 standards of this chapter.

(3) *Information to be obtained and maintained:*

a. 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 said structure contains a basement.
b. For all new and substantially improved floodproofed structures, i) verify and record the actual elevation (in relation to mean sea level), to which the structure was floodproofed, and ii) maintain the floodproofing certifications required in section 9-22(3);
c. In coastal high hazard zones, obtain certification from a registered professional engineer or architect that the structure is securely anchored to adequately anchored pilings or columns in order to withstand velocity waters and hurricane wave wash;
d. Maintain for public inspection all records pertaining to the provisions of this chapter; and
e. Submit reports to the Federal Insurance Administration as required.

(4)*Alteration of watercourses:* Require that the flood carrying capacity within the altered or relocated portion of any watercourse is maintained. Notify adjacent communities and the state coordinating office prior to any alteration or relocation of a watercourse, and submit copies of such notifications to FEMA.

(5) *Interpretation of boundaries* Make interpretations where needed, as to the exact location of the boundaries of special flood hazard areas, such as 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 reasonable opportunity to appeal the interpretation as provided in section 9-36(b).

**Secs. 9-24-9-30. Reserved.**

## DIVISION 3. FLOOD HAZARD REDUCTION

**Sec. 9-31. All areas of special flood hazard.**

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

(1) New construction and substantial improvements shall be anchored to prevent flotation, collapse or lateral movement of the structure;
(2) New construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage;
(3) New construction or substantial improvements shall be constructed by methods and practices that minimize flood damage and shall be located landward of the mean high tide.
(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.
(5) New and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system;
(6) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the system into flood waters;
(7) On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from [them] during flooding,
(8) All manufactured homes (including "mobile" homes placed on a site for one hundred eighty (180) consecutive days or longer) to be placed, or substantially improved shall be elevated so that the lowest floor is above the base flood elevation. They shall be placed on a permanent foundation which itself is securely anchored and to which the structure is securely anchored so that it will resist flotation, lateral movement, and hydrostatic and hydrodynamic pressures. Anchoring may include, but not be limited to, the use of over-the-top or frame ties to ground anchors.

(9) If any portion of a watercourse is altered or relocated the flood carrying capacity shall be maintained.

(10) A structure already in compliance with the provisions of this chapter shall not be made noncompliant by any alteration, repair reconstruction or improvement to the structure.

(Ord. of 12-7-92, § 5.1; Ord. of 9-26-95)

**Sec. 9-32. Standards for areas without established base flood elevations.**

Obtain, review and reasonably utilize any base flood elevation and floodway data available from a federal, state or other source, including data developed pursuant to section 9-23(2) of this chapter, as criteria for requiring that new construction, substantial improvements or other development in Zone A on the town's FIRM meet the standards in section 9-33(a)(1), 9-33(3), 9-33(4), and 9-35.

(Ord. of 12-7-92, § 5.2)

**Sec. 9-33. Specific standards.**

In all areas of special flood hazard Zones Al-30, AE, AH where base flood elevation data has been provided, as set forth in sections 9-4 or 9-23(2), the following provisions are required:

*(1) Residential construction.* New construction or substantial improvement of any residential structure shall have the lowest floor, including basement, elevated at least to the base flood elevation.

(2) *Nonresidential construction.*

a. New construction or substantial improvement of anrcommercial, industrial, or nonresidential structure located in Zone Al-30, AE & AH shall have the lowest floor, including basement,

elevated at least to the level of the base flood elevation; or

b. Nonresidential structures located in all A zones may be floodproofed in lieu of being elevated provided that together with all attendant utilities and sanitary facilities the areas of the structure below the required elevation 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 develop structural design, specifications, and plans for the construction, and shall certify that the design and methods of construction are in accordance with acceptable standards of practice for meeting the provisions of this subsection. Such certification shall be provided to the town engineer as set forth in 9-22(3).

(3) *Elevated buildings.* New construction or substantial improvements of elevated buildings that include fully enclosed areas below the lowest floor that are usable solely for parking of vehicles, building access or storage in an area other than a basement and which are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the automatic entry and exit of floodwater. The bottom of at least one (1) side of the fully enclosed area must be at or above grade. Such space shall be designed to preclude finished living space.

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 (2) openings having a total net area of not less than one (1) square inch for every square foot of enclosed area subject to flooding;

2. The bottom of all openings shall be no higher than one (1) 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. Electrical, plumbing, and other utility connections are prohibited below the base flood elevation;

c. 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).

*(4) Floodways.* Located within areas of special flood hazard established in section *9-4* are areas designated as floodways. The floodway is an extremely hazardous area due to the velocity of flood waters which carry debris, potential projectiles and has 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 is provided demonstrating that encroachments shall not result in any increase in flood levels during occurrence of the base flood discharge.

b. In zones where base flood elevations have not been determined, but before a floodway is designated, no new construction, substantial improvement, or other development (including fill) shall be permitted which will increase base flood elevations more than one (1) foot at any point along the watercourse when all anticipated development is considered cumulatively with the proposed development. .

c. The town may request floodway data of an applicant for watercourses within FEMA - published floodways. When such data is provided by an applicant or whenever such data is available from any other source (in response to the town's request or not), the town shall adopt a regulatory floodway based on the principle that the floodway must be able to convey the waters of the base flood without increasing the water surface elevation more than one (1) foot at any point along the watercourse.

(Ord. of 12-7-92, § 5.3; Ord. of 9-26-95)

Sec. 9-34. **Coastal high hazard areas (VE zones).**

Located within the areas of special flood hazard established in this chapter are areas designated as coastal high hazard areas (zones VE). These areas have special flood hazards associated with wave wash, therefore the following provisions shall apply:

(1) All new construction or substantial improvement 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.

(2) All new construction or substantial improvement shall be securely anchored on pilings or columns.

(3) 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 one hundred-year mean recurrence interval (one (1) percent annual chance floods and winds).

(4) A registered professional engineer or architect shall develop structural design specifications and plans for the construction and shall certify that the design, specifications and plans for construction are in accordance with acceptable standards and are in compliance with the provisions contained in subsections (1) through (3) above of this chapter.

(5) There shall be no fill used as structural support. Noncompacted fill may be used around the perimeter of a building for landscaping/esthetic 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.

(6) There shall be no alteration' of sand dunes which would increase potential flood damage.

(7) Nonsupporting breakaway walls, lattice work or mesh screening shall be allowed below the base flood elevation provided it is not part of the structural support of the building and is designed so as to breakaway, under abnormally high tides or wave action, without damage to the structural integrity of the building on which it is to be used and provided the following design specifications are met:

a. Design safe loading resistance of each wall shall not be less than ten (10) nor more than twenty (20) pounds per square foot; or

b. If more than twenty (20) pounds per square foot, a registered professional engineer or architect shall certify that the design wall collapse would result from a water load less than that which would occur during the base flood event, and the elevated portion of the building and supporting foundation system shall not be subject to collapse, displacement, or other structural damage due to the effects of wind and water loads acting simultaneously on all building components during the base flood event. Maximum wind and water loading values to be used in this determination shall each have one-percent chance of being equaled or exceeded in any given year (100-year mean recurrence interval).

(8) If breakaway walls, lattice work or screening are utilized the resulting 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.

(9) Prior to construction, plans for any structures that will have breakaway walls, lattice work or screening must be submitted to the town engineer for approval.

(10) Any alteration, repair, reconstruction, or improvement to a structure shall not en= close the space below the lowest floor except with breakaway walls, lattice work, or screening as provided for in subsection (7) and (8).

(11) Placement of manufactured homes within a V zone shall be prohibited.

(Ord. of 12-7-92, § 5.4)

Sec. 9-35. **Standards for subdivision proposals.**

In all special flood hazard areas the following requirements shall apply:

(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 subdivisions).

(Ord. of 12-7-92, § 6.4; Ord. of 9-26-95)

**Sec. 9-36. Variance procedures.**

(a) The flood and erosion control board shall hear and decide appeals and requests for variances from the requirements of this chapter.

(b) The flood and erosion control board shall hear and decide appeals when it is alleged there is an error in any requirement, decision, or determination made by the town engineer in the enforcement or administration of this chapter.

(c) Any person aggrieved by the decision of the flood and erosion control board or any person owning land which abuts or is within a radius of one hundred (100) feet of the land in question may appeal within fifteen, (15) days after such decision to the State Superior Court of New Haven County, as provided in Section 8-8 of the General Statutes.

(Ord. of 12-7-92, §§ 7-1-7-3)

**Sec. 9-37. Specific situation variances.**

(a) *Buildings on* do *historic register.* Variances "may" be issued for the reconstruction, rehabilitation or restoration of structures 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 sections 9-38(a) through (d), and provided the proposed reconstruction, rehabilitation, or restoration will not result in the structure losing its historical character.

(b) *Preexisting, small lot location.* Variances may be issued for new construction and substantial improvements to be erected on a lot of onehalf acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, in conformance with section 9-38(c)(2).

*(c) Functional dependent uses.* Variances may be issued for new construction and substantial improvement and other development necessary for the conduct of a functionally dependent use provided the structure or other development is protected by methods that minimize flood damage, create no additional threat to public safety and meet the requirements of section 9-38(c) and (d).

(d) *Floodway prohibition.* Variances shall not be issued within any designated floodway if any increase in flood lexels during the base flood discharge would result. (Ord. of 12-7-92, § 7.4)

**Sec. 9-38. Considerations for granting of variances.**

(a) *Consideration by board.* In passing upon applications, the flood and erosion control board shall consider all technical evaluations, all relevant factors, all standards specified in other sections of this chapter and;

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

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

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

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

(5) The necessity of the facility to 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 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 flood waters 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 and water systems, and streets and bridges.

(b) *Board may attach conditions.* Upon consideration of the factors listed above, and the purposes of this chapter, the flood and erosion control board may attach such conditions to the granting of variances as it deems necessary to fin-ther the purposes of this chapter.

(c) 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 as not to destroy the historic character and design of the building;

(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, 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 nuisance, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.

(3) Any applicant to whom a variance is granted shall be given written notice specifying the difference between the base flood elevation and the elevation to which the structure is to be built and stating that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation up to amounts as high as twenty-five dollars ($25.00) for one hundred dollars ($100.00) of insurance coverage.

(4) The town engineer shall maintain the records of all appeal actions and report any variances to the Federal Emergency Management Agency upon request.

(Ord. of 12-7-92, § 7.5)

**Sec. 9-39. Penalties for violation.**

Violation of the provisions of this chapter or failure to comply with any of its requirements, including violation of conditions and safeguards established in connection widfr grants of variance or special exceptions, shall constitute a misdemeanor. Any person who violates this chapter or fails to comply with any of its requirements, shall, upon conviction thereof, be fined not more than two hundred **fifty dollars** ($250.00) per day if proven done willfully and one hundred dollars ($100.00) if not, or imprisoned for not more than ten (10) days for each day of violation, or both, and in addition, shall pay all costs and reasonable legal fees involved in the case. Nothing herein contained shall prevent the Town of Madison from taking such other lawful action as is necessary to prevent or remedy any violation.

(Ord. of 12-7-92, § 7.6)