

COLONIE LAND USE LAW
ADOPTED 1-4-07 by LOCAL LAW #1 of 2007

ARTICLE XVII - CHAPTER 190-17

FLOODPLAIN MANAGEMENT

A. Findings.

The Town Board of the Town of Colonie finds that the potential and/or actual damages from flooding and erosion may be a problem to the residents of the Town of Colonie and that such damages may include the destruction or loss of private and public housing, damage to public facilities, both publicly and privately owned, and injury to and loss of human life. In order to minimize the threat of such damages and to achieve the purposes and objectives hereinafter set forth, this Article is adopted.

B. Purpose.

It is the purpose of this Article 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) Regulate 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 floodwaters;
- (4) Control filling, grading, dredging and other development which may increase erosion or flood damages;
- (5) Regulate the construction of flood barriers which will unnaturally divert floodwaters or which may increase flood hazards to other lands; and
- (6) Qualify for and maintain participation in the National Flood Insurance Program.

This Article is adopted pursuant to the National Flood Insurance Program effective October 1, 1986, and shall supersede all previous laws adopted for the purpose of establishing and maintaining eligibility for flood insurance.

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C. Objectives.

The objectives of this Article are to:

- (1) Protect human life and health;
- (2) Minimize the expenditure of public money for costly flood-control projects;
- (3) Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- (4) Minimize prolonged business interruptions;
- (5) Minimize damage to public facilities and utilities, such as water and gas mains, electric, telephone, sewer lines, streets and bridges located in areas of special flood hazard;
- (6) 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) Provide that applicants are notified that property is in an area of special flood hazard; and
- (8) Ensure that those who occupy the areas of special flood hazard assume responsibility for their actions.

D. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

APPEAL — A request for a review of the Planning and Economic Development Department's interpretation of any provision of this Article or a request for a variance.

AREA OF SPECIAL FLOOD HAZARD - The land in the floodplain within a community subject to a one-percent or greater chance of flooding in any given year. This area may be designated as Zone A, AE, AH, AO, A1 through A99, V, VO, VE or V1 through V30. It is also commonly referred to as the "base floodplain" or "one-hundred-year floodplain."

BASE FLOOD — The flood having a one-percent chance of being equaled or exceeded in any given year.

BASEMENT — That portion of a building having its floor subgrade (below ground level) on all sides.

BREAKAWAY WALL — 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 — Any structure having a roof supported by columns, piers, or walls and intended for shelter, housing or enclosure of persons,

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animals or property.

CELLAR — see 'BASEMENT'

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

ELEVATED BUILDING — 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) or shear walls.

EXISTING MANUFACTURED HOME PARK OR MANUFACTURED HOME SUBDIVISION — A manufactured home park or manufactured home subdivision for which the construction of facilities for servicing the lot on which the manufactured 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 chapter.

EXPANSION TO AN EXISTING MANUFACTURED HOME PARK OR MANUFACTURED HOME 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 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.
2. The unusual and rapid accumulation or runoff of surface waters from any source.

FLOOD BOUNDARY AND FLOODWAY MAP (FBFM) — An official map of the Town published by the Federal Emergency Management Agency as part of the Town's Flood Insurance Study. The "FBFM" delineates a regulatory floodway along watercourses studied in detail in the Town's Flood Insurance Study.

FLOOD HAZARD BOUNDARY MAP (FHBM) — An official map of the Town, issued by the Federal Emergency Management Agency, where the boundaries of the areas of special flood hazard have been defined but no water surface elevation is provided.

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

FLOOD INSURANCE STUDY — An official report for the Town provided by the Federal Emergency Management Agency, containing flood profiles, as well as the Flood Boundary – Floodway Map and the water surface

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elevations of the base flood.

FLOODPROOFING — Any combination of structural and nonstructural additions, changes or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

FLOODWAY — See “Regulatory Floodway.”

FLOOR — The top horizontal 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.

FUNCTIONALLY DEPENDENT USE — A use which cannot perform its intended purpose unless it is located or carried out in close proximity to water, such as a docking or port facility necessary for the loading and unloading of cargo or passengers, shipbuilding and ship repair. The term does not include long-term storage, manufacture, sales or service facilities.

HIGHEST ADJACENT GRADE — The highest natural elevation of the ground surface, prior to construction, next to the proposed walls of a structure.

LOWEST FLOOR — The lowest level, including basement or cellar, of the lowest enclosed area of a building. An unfinished or flood-resistant enclosure used solely for the parking of vehicles, building access or storage in an area other than a basement is not considered a building’s “lowest floor,” provided that such enclosure is not built so as to render the structure in violation of the applicable nonelevation design requirements of the flood plain management provisions of this Article.

LOWEST FLOOR — The lowest level, including basement or cellar, of the lowest enclosed area of a building. An unfinished or flood-resistant enclosure used solely for the parking of vehicles, building access or storage in an area other than a basement is not considered a building’s “lowest floor,” provided that such enclosure is not built so as to render the structure in violation of the applicable nonelevation design requirements of the flood plain management provisions of this Article.

MANUFACTURED HOME — A factory-manufactured structure constructed and transportable upon one or more permanent chassis, designed to be used as a single-family residential dwelling, with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning and electrical systems contained therein. The chassis of a Manufactured Home shall have as an integral part of a Frame as defined by this Article. The removal of the drawbar and coupling mechanism, running-gear assembly or lights from the chassis shall have no effect upon this definition. A

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Manufactured Home may contain parts that fold, collapse or telescope when being towed and expand later to provide additional cubic capacity as well as two or more separately towable components designed to be joined into one integral unit, capable of being again separated into the components for repeated towing. Calculations used to determine the number of square feet in a structure will be based on the structure's exterior dimensions measured at the largest horizontal projections when erected on site. These dimensions will include all expandable rooms, cabinets and other projections containing interior space but shall not include bay windows.

MEAN SEA LEVEL — 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.

NEW CONSTRUCTION — Structures for which the start of construction commenced on or after the effective date of this chapter.

ONE-HUNDRED-YEAR FLOOD — See "Base Flood."

PRINCIPALLY ABOVE GROUND — Having at least 51% of the actual cash value of the structure, excluding land value, is above ground.

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 a designated height as determined by the Federal Emergency Management Agency in a Flood Insurance Study or by other agencies as provided in this Article.

START OF CONSTRUCTION — The initiation, excluding planning and design of any phase of a project, of physical alteration of a property, and shall include land preparation, such as clearing, grading and filling; installation of streets and/or walkways; excavation for a basement, footings, piers or foundations or the erection of temporary forms. It also includes the placement and/or installation on the property of accessory buildings (garages, sheds), storage trailers and building materials. For manufactured homes, the "actual start" means affixing of the manufactured home to its permanent site.

SUBSTANTIAL IMPROVEMENT — Any repair, reconstruction or improvement of a structure, the cost of which equals or exceeds 50% of the market value of the structure either before the improvement or repair is started or, 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 commence 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,

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include either:

1. Any project for improvement of a structure to comply with existing state or local building, fire, health, sanitary or safety code specifications which are solely necessary to assure safe living conditions; or
2. Any alteration of a structure or contributing structure listed on the National Register of Historic Places or a State Inventory of Historic Places.

E. General Provisions.

- (1) Applicability. This Article shall apply to all areas of special flood hazard within the jurisdiction of the Town of Colonie.
- (2) Basis for establishing areas of special flood hazard. The areas of special flood hazard have been identified by the Federal Emergency Management Agency in a scientific and engineering report, entitled "Flood Insurance Study for the Town of Colonie, Albany County, New York," dated March 1979, with Flood Insurance Rate Maps enumerated on Map Index No. 360007 0001-0025, dated September 5, 1979, and with accompanying Flood Boundary and Floodway Maps enumerated on Map Index No. 360007 0001-0025, dated September 5, 1979. The above documents are hereby adopted and declared to be a part of this Article and are on file at the Town Planning and Economic Development Department (PEDD).
- (3) Warning and disclaimer of liability. The degree of flood protection required by this Article is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes. This Article does not imply that land outside the areas of special flood hazard or that uses permitted within such areas will be free from flooding or flood damages. This Article shall not create liability on the part of the Town of Colonie, any officer or employee thereof, or the Federal Emergency Management Agency, for any flood damages that result from reliance on this Article or any administrative decision lawfully made thereunder.

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F. Designation and duties of local administrator.

The Planning and Economic Development Department (PEDD) is hereby appointed to administer and implement this Article by granting or denying development permit applications in accordance with its provisions. Duties of the PEDD shall include but not be limited to the following.

- (1) Permit application review. The PEDD shall:
 - (a) Review all development permit applications for completeness, and to determine that the provisions and standards of this Article have been met.
 - (b) Review subdivision and other proposed new development, including manufactured home parks, to determine whether proposed building sites will be reasonably safe from flooding. If a proposed building site is located in an area of special flood hazard, all new construction and substantial improvements shall meet the applicable standards of this Article.
 - (c) Determine whether any proposed development in an area of special flood hazard may result in physical damage to any other property (e.g., stream bank erosion and increased flood velocities). The PEDD may require the applicant to submit additional technical analyses and data necessary to complete the determination. If the proposed development may result in physical damage to any other property or fails to meet the "Provisions for Flood Hazard Reduction" requirements of this Article, no permit shall be issued. The applicant may revise the application to include measures that mitigate or eliminate the adverse effects and re-submit the application.
 - (d) Determine that all necessary permits have been obtained from those federal, state or local governmental agencies from which prior approval is required.

- (2) Use of other base flood and floodway data. When base flood elevation or floodway data has not been provided in accordance with the section of this Article setting forth the "Basis for establishing areas of special flood hazard", the PEDD shall obtain, review and reasonably utilize any base flood elevation and floodway data available from a federal, state or other source, including data required to be developed by an applicant pursuant to the provisions of this Article, in order to administer the "Specific standards" and "Floodways" requirements established herein.

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- (3) Information to be obtained and maintained. The PEDD shall:
 - (a) Obtain and record the actual elevation, in relation to mean sea level, of the lowest floor, including basement or cellar of all new or substantially improved structures, and whether or not the structure contains a basement or cellar.
 - (b) For all new or substantially improved floodproofed structures:
 - [1] Obtain and record the actual elevation, in relation to mean sea level, to which the structure has been floodproofed; and
 - [2] Maintain the floodproofing certifications required in this Article.
 - (c) Maintain for public inspection all records pertaining to the provisions of this Article, including notices of watercourse alterations, variances when granted, and certificates of compliance.

- (4) Alteration of watercourses. The PEDD shall:
 - (a) Notify adjacent communities and the New York State Department of Environmental Conservation prior to permitting any alteration or relocation of a watercourse, and submit evidence of such notification to the Regional Director, Federal Emergency Management Agency, Region II.
 - (b) Require that maintenance is provided within the altered or relocated portion of said watercourse so that the flood-carrying capacity is not diminished.

- (5) Interpretation of FIRM boundaries.
 - (a) The PEDD shall have the authority to make interpretations when there appears to be a conflict between the limits of the federally identified area of special flood hazard and actual field conditions.
 - (b) Base flood elevation data established pursuant to applicable provisions of this Article, when available, shall be used to accurately delineate the areas of special flood hazard.
 - (c) The PEDD shall use flood information from any other authoritative source, including historical data, to establish the limits of the areas of special flood hazard when base flood elevations are not available.

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G. Provisions for Flood Hazard Reduction.

- (1) General standards. In all areas of special flood hazard, the following standards shall apply to all new development, including new and substantially improved structures:
 - (a) Anchoring. All new construction and substantial improvements shall be anchored to prevent flotation, collapse or lateral movement of the structure during the base flood. This requirement is in addition to applicable State and local anchoring requirements for resisting wind forces.
 - (b) 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.
 - (c) Utilities.
 - [1] New and replacement electrical, heating, ventilation, plumbing and air-conditioning equipment and other service facilities shall be located at or above the base flood elevation. Electrical wiring and outlets, switches, junction boxes and panels shall be elevated to or above the base flood elevation unless they conform to the appropriate provisions of the electrical part of the NY State Uniform Fire Prevention and Building Code for location of such items in wet conditions;
 - [2] All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the system;
 - [3] New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters. Sanitary sewer and storm drainage systems for buildings that have openings below the base flood elevation shall be provided with automatic backflow valves or other automatic backflow devices that are installed in each discharge line passing through a building's exterior wall; and
 - [4] On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.
 - (d) Subdivision proposals.
 - [1] All subdivision proposals shall be consistent with the need to minimize flood damage;

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- [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 damage; and
- (e) Encroachments.
- [1] Within Zones A1-A30 and AE, on streams without a regulatory floodway, no new construction, substantial improvements or other development (including fill) shall be permitted unless:
 - [a] the applicant demonstrates that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any location, or,
 - [b] the Town of Colonie agrees to apply to the Federal Emergency Management Agency (FEMA) for a conditional FIRM revision, FEMA approval is received and the applicant provides all necessary data, analyses and mapping and reimburses the Town of Colonie for all fees and other costs in relation to the application. The applicant must also provide all data, analyses and mapping and reimburse the Town of Colonie for all costs related to the final map revision.
 - [2] On streams with a regulatory floodway, as shown on the Flood Boundary and Floodway Map or the Flood Insurance Rate Map adopted in Section 3.2, no new construction, substantial improvements or other development in the floodway (including fill) shall be permitted unless:
 - [a] a technical evaluation by a licensed professional engineer shows that such an encroachment shall not result in any increase in flood levels during occurrence of the base flood, or,
 - [b] the Town of Colonie agrees to apply to the Federal Emergency Management Agency (FEMA) for a conditional FIRM and floodway revision, FEMA approval is received and the applicant provides all necessary data, analyses and mapping and reimburses the Town of Colonie for all fees and other costs in relation to the application. The applicant must also provide all data, analyses and mapping and reimburse the Town of Colonie for all costs related to the final map revisions.

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- (2) Specific standards.
- (a) Residential construction. New construction and substantial improvements of any residential structure shall conform to the following requirements:
- [1] In areas of special flood hazard where base flood elevation data are available, the lowest floor, including basement or cellar, shall be elevated at least two feet above the base flood elevation.
 - [2] In areas of special flood hazard where base flood elevation data are not available, the lowest floor, including basement or cellar, shall be elevated at least three feet above the highest adjacent grade.
 - [3] Adequate drainage paths shall be required to guide flood waters around and away from proposed structures on slopes.
 - [4] Fully enclosed areas below the lowest floor that are subject to flooding, in an area other than a basement, shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a licensed professional engineer or architect or meet or exceed the following minimum criteria:
 - [a] A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed floor area subject to flooding shall be provided;
 - [b] The bottom of all such openings shall be no higher than one foot above the lowest adjacent finished grade; and
 - [c] Openings may be equipped with louvers, valves, screens or other coverings or devices, provided that they permit the automatic entry and exit of floodwaters.Such areas may be useable solely of parking of vehicles, building access, or storage, and may not be subgrade on all sides.
- (b) Nonresidential construction. In areas where base flood elevation data are available, new construction and substantial improvements of any commercial, industrial or other nonresidential structure, together with attendant utility and sanitary facilities, shall either have the lowest floor, including basement or cellar, elevated two feet above the base flood elevation or be floodproofed so that the structure is watertight below two feet above the base flood level with walls substantially impermeable to the passage of water. All structural components

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located below the base flood level must be capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy.

- [1] If the structure is to be elevated, fully enclosed areas below the base flood elevation shall be designed to automatically (without human intervention) allow for the entry and exit of floodwaters for the purpose of equalizing hydrostatic flood forces on exterior walls. Designs for meeting this requirement must either be certified by a licensed professional engineer or a licensed architect or meet the following criteria:
 - [a] A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed floor area subject to flooding shall be provided;
 - [b] The bottom of all such openings shall be no higher than one foot above the lowest adjacent finished grade; and
 - [c] Openings may be equipped with louvers, valves, screens or other coverings or devices, provided that they permit the automatic entry and exit of floodwaters.
- [2] If the structure is to be floodproofed:
 - [a] A licensed 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 to make the structure watertight with walls substantially impermeable to the passage of water, with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy; and
 - [b] The licensed professional engineer or architect, or a licensed surveyor, shall certify the specific elevation (in relation to mean sea level) to which the structure is floodproofed.

Where no base flood elevation data are available, the lowest floor, including basement, shall be elevated at least three feet above the highest adjacent grade. Adequate drainage paths shall be required to guide flood waters around and away from proposed structures on slopes.

- (c) Manufactured homes and recreational vehicles.

- [1] Recreational vehicles shall either:
 - [a] be on site fewer than 180 consecutive days,

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- [b] be fully licensed and ready for highway use (a recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices and has no permanently attached additions), or
 - [c] meet the requirements for manufactured homes as set forth below.
- [2] Manufactured Homes.
- [a] Where base flood elevation data are available, newly placed or substantially improved manufactured homes shall be elevated on a permanent foundation such that the lowest floor is elevated at least two feet above the base flood elevation and the home is securely anchored to an adequately anchored foundation system to resist flotation, collapse and lateral movement.
 - [b] When no base flood elevation data are available, new and substantially improved manufactured homes shall be elevated such that 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 are securely anchored to an adequately anchored foundation system to resist flotation, collapse or lateral movement.
- (3) Floodway Standards.
- (a) Located within areas of special flood hazard are areas designated as floodways. The floodway is an extremely hazardous area due to high-velocity floodwaters carrying debris and posing additional threats from potential erosion forces. When floodway data is available for a particular site, all encroachments, including fill, new construction, substantial improvements and other development are prohibited within the limits of the floodway unless a technical evaluation demonstrates that such encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge.
 - (b) All new construction and substantial improvements shall comply with all applicable Provisions for Flood Hazard Reduction as set forth in this Article.
 - (c) The placement of any manufactured homes shall be prohibited, except in an existing manufactured home park or existing manufactured home subdivision.

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H. Permits.

- (1) Permit Required. A development permit shall be obtained before the start of construction or any other development within the area of special flood hazard as established in this Article. Application for a development permit shall be made on forms furnished by the PEDD.

- (2) Permit applications, requirements. The following information is required for all permit applications:
 - (a) Elevation in relation to mean sea level of the proposed lowest floor, including basement or cellar, of all structures;
 - (b) Elevation in relation to mean sea level to which any nonresidential structure will be floodproofed;
 - (c) When applicable, a certificate from a licensed professional engineer or architect that the utility floodproofing will meet the criteria in herein;
 - (d) Certificate from a licensed professional engineer or architect that the nonresidential floodproofed structure will meet the floodproofing criteria in herein;
 - (e) Description of the extent to which any watercourse will be altered or relocated as a result of proposed development. Computations by a licensed professional engineer must be submitted that demonstrate that the altered or relocated segment will provide equal or greater conveyance than the original stream segment. The applicant must, when so notified by the PEDD, submit any maps, computations or other material required by the Federal Emergency Management Agency (FEMA) to revise the Flood Insurance Study, Flood Insurance Rate Maps, and Flood Boundary and Floodway Maps of the Town of Colonie, and must pay any fees or other costs assessed by FEMA for this purpose. The applicant must also provide assurances that the conveyance capacity of the altered or relocated stream segment will be maintained;
 - (f) A technical analysis, by a licensed professional engineer, if required by the PEDD, which shows whether proposed development to be located in an area of special flood hazard may result in physical damage to any other property.
 - (g) In Zone A, when no base flood elevation data are available from other sources, base flood elevation data shall be provided for subdivision proposals and other proposed development (including proposals for manufactured home and recreational vehicle parks and subdivisions) greater than either 50 lots or five acres.

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- (h) Any other such information as PEDD may determine necessary to establish compliance with this Article.
- (3) Permit applications, additional requirements. In addition to the above requirements, all applications for new construction shall, and all other applications shall at the discretion of the PEDD contain site plans:
 - (a) Acceptable to the PEDD for clearly interpreting the features of the plan, i.e., one inch equals 40 feet or less.
 - (b) Showing existing and proposed grade contours extending at least 50 feet beyond the limits of construction. All elevations shall be referred to United States Geological Survey data.
 - (c) Showing the low water edge of stream and limits of the flood hazard area.
 - (d) Showing all existing and proposed buildings, structures, utilities, paved areas, etc.
 - (e) Showing elevations of the lowest floor, including basement, of all existing and proposed buildings and structures.
 - (f) Sealed by an engineer, architect or land surveyor licensed to practice in the State of New York.
- (4) Submissions required at construction stage. Upon placement of the lowest floor or floodproofing by whatever means, it shall be the duty of the permit holder to submit to the PEDD a certificate of the elevation of the lowest floor or floodproofed elevation, in relation to mean sea level. The elevation certificate shall be prepared by or under the direct supervision of a licensed land surveyor or professional engineer and certified by same. When floodproofing is utilized for a particular building, the floodproofing certificate shall be prepared by or under the direct supervision of a licensed professional engineer or architect and certified by the same. Any further work undertaken prior to submission and approval of the certification shall be at the permit holder's risk. The PEDD shall review all data submitted. Deficiencies detected shall be cause to issue a stop-work order for the project unless immediately corrected.
- (5) Inspections. The PEDD and/or the applicant 's engineer or architect shall make periodic inspections at appropriate times throughout the period of construction in order to monitor compliance with permit conditions and enable said inspector to certify that the development is in compliance with the requirements of either the development permit or the approved variance.

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- (6) Certificate Of Compliance.
 - (a) In areas of special flood hazard, it shall be unlawful to occupy or to permit the use or occupancy of any building or premises, or both, or part thereof hereafter created, erected, changed, converted or wholly or partly altered or enlarged in its use or structure until a certificate of compliance has been issued by the PEDD stating that the building or land conforms to the requirements of this local law.
 - (b) A certificate of compliance shall be issued by the PEDD upon satisfactory completion of development in areas of special flood hazard.
 - (c) Issuance of the certificate shall be based upon the inspections conducted as prescribed herein, and/or any certified elevations, hydraulic data, floodproofing, anchoring requirements or encroachment analyses which may have been required as a condition of the approved permit.

- (7) Stop-work orders.
 - (a) All floodplain development found ongoing without an approved permit shall be subject to the issuance of an order by the PEDD to cease and desist from any further work of any nature on the site. Disregard of a stop-work order shall be subject to the penalties described in this Chapter.
 - (b) All floodplain development found noncompliant with the provisions of this Article and/or the conditions of the approved permit shall be subject to the issuance of an order by the PEDD to cease and desist from any further work of any nature on the site. Disregard of a stop-work order shall be subject to the penalties described in this chapter.

I. Variances and appeals.

- (1) Flood Plains Management Appeals Board. The Flood Plains Management Appeals Board as established by Town of Colonie shall hear and decide appeals and requests for variances from the requirements of this chapter.

- (2) Appeals. The Flood Plains Management Appeals Board shall hear and decide appeals when it is alleged there is an error in any requirement, decision or determination made by the PEDD in the enforcement or administration of this chapter.

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- (3) Consideration in Appeals. In passing upon such applications, the Flood Plains Management Appeals Board shall consider all technical evaluations, all relevant factors, standards specified in other sections of this Article 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 facility 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 facility to the community;
 - (e) The necessity to the facility of a waterfront location, where applicable;
 - (f) The availability of alternative locations for the proposed use that are not subject to flooding or erosion damage;
 - (g) The compatibility of the proposed use with existing and anticipated development;
 - (h) The relationship of the proposed use to the Comprehensive Plan and floodplain management program of that area;
 - (i) The safety of access to the property in times of flood for ordinary and emergency vehicles;
 - (j) The costs to local governments and the dangers associated with conducting search and rescue operations during periods of flooding;
 - (k) The expected heights, velocity, duration, rate of rise and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site; and
 - (l) The costs of providing governmental services during and after flood conditions, including search and rescue operations, maintenance and repair of public utilities and facilities, such as sewer, gas, electrical and water systems and streets and bridges.
- (4) Conditions for variances.
- (a) Generally. Generally, variances may be issued for new construction and substantial improvements to be erected on a lot of 1/2 acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, provided that the items above have been fully considered. As the lot size increases beyond 1/2 acre, the technical justification required for issuing the variance increases.

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- (b) Repair or rehabilitation of historic structures. Variances may be issued for the repair or rehabilitation of historic structures upon determination that:
 - [1] the proposed repair or rehabilitation will not preclude the structure's continued designation as a "Historic structure".
 - [2] the variance is the minimum necessary to preserve the historic character and design of the structure.
 - (c) New construction and substantial improvements. Variances may be issued by a community for new construction and substantial improvements and for other development necessary for the conduct of a functionally dependent use, provided that:
 - [1] The criteria contained in the other subparagraphs of this section are met.
 - [2] The structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threat to public safety.
 - (d) Issuance in Floodway. Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.
 - (e) Minimum necessary variance. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
 - (f) Written justification required. Variances shall only be issued upon receiving written justification including:
 - [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 or conflict with existing local laws or ordinances.
 - (g) Notice of cost of flood insurance. Any applicant to whom a variance is granted for a building with the lowest floor below the base flood elevation shall be given written notice by the PEDD that the cost of flood insurance will be commensurate with the increased risk resulting from lowest floor elevation
- (5) Action by Appeals Board. Upon consideration of the above factors and conditions, and the purposes of this Article, the Flood Plains Management Appeals Board shall act to approve, deny, or approve with conditions to variance request. The Board may attach such conditions to the granting of variances as it deems necessary to

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further the purposes of this Article.

- (6) Maintenance of Records. The PEDD shall maintain the records of all appeal actions, including technical information, and report any variances to the Federal Emergency Management Agency upon request.

J. Administration and enforcement.

The provisions of this article shall be primarily administered and enforced by the PEDD, which shall have the power to make necessary inspections.