ORDINANCE NO. 2011-22-264

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS, FLORIDA, AMENDING SECTION 30-6 OF THE CITY'S CODE OF ORDINANCES RELATING TO FLOODS; AMENDING SECTION 30-16 ENTITLED "PROHIBITIONS"; AMENDING SECTION 30-36 ENTITLED "PERMIT PROCEDURES"; AMENDING SECTION 30-86 ENTITLED "SAME-DUTIES"; PROVIDING FOR THE ADOPTION OF REPRESENTATIONS; REPEALING ALL ORDINANCES IN CONFLICT; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR INCLUSION IN CODE; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, on September 8, 2009, the City adopted floodplain regulations to protect the City's residents and businesses from potential flood damage and to ensure compliance with the National Flood Insurance Program, and

WHEREAS, City staff recommends amending Chapter 30 to provide additional safeguards against flood damage,

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS, FLORIDA, AS FOLLOWS:

Section 1. ADOPTION OF REPRESENTATIONS: The foregoing Whereas paragraphs are hereby ratified and confirmed as being true, and the same are hereby made a specific part of this Ordinance.

Section 2. AMENDMENT: Section 30-6 of the City of Miami Gardens Code of Ordinance is hereby amended as follows:

Sec. 30-6. - Definitions.

Stormwater Runoff means precipitation from natural rainfall that flows over pervious or impervious surfaces.

Stormwater Management System is any system that is designed to retain, treat, properly dispose of or otherwise manage stormwater runoff.

Structure means for floodplain management purposes a walled and roofed building, including gas or liquid storage tank that is principally above ground, as well as a manufactured home.

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

Substantial improvement means any combination of reconstruction, rehabilitation, renovation, addition, or other improvement of a structure, the cumulative cost of which equals or exceeds 50 percent of the market value of the structure before the "start of construction" of the improvement. The cumulative cost shall be tracked by the city for 180 days from issuance date of a building permit ~~the start of construction~~. This term includes structures that have incurred "substantial damage" regardless of the actual repair work performed. This term does not, however, include any repair or 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 prior to the application for permit for improvement, and which are the minimum necessary to assure safe living conditions.

Section 3. AMENDMENT: Section 30-16 of the City of Miami Gardens Code of Ordinances is hereby amended as follows:

Sec. 30-16. - Prohibitions.

▪▪▪

b. Proposed elevations of all machinery, utilities and equipment servicing the structure, demonstrating compliance with the criteria established in subsection (1)a of this section;

c. Proposed elevation of the lowest adjacent grade of the exterior of the structure;

d. A sediment and erosion control plan that includes appropriate and adequate best management practices to retain sediment and stormwater runoff on a construction site, and prevent erosion at such site;

e. A stormwater management plan that demonstrates on-site retention of stormwater runoff;

f. Proposed elevation in relation to mean sea level to which any nonresidential building will be floodproofed;

g. Certificate from a registered professional engineer or architect that the nonresidential floodproofed building will meet the floodproofing criteria in section 30-64(2); and

h. Description of the extent to which any watercourse will be created, altered or relocated as a result of proposed development;

i. For accessory structures, the lowest floor shall be elevated to a minimum of four inches above the highest adjacent grade. For accessory structures placed in special flood hazard areas, the design requirements in section 30-64(3) shall apply.

(2) Construction stage~~.~~:

a. Upon the start of construction, the permit holder shall have in place a Sediment and Erosion Control Plan as approved in Section 30-36(1)(d) of this Article. Failure to comply with conditions of this approved Plan during construction shall be considered a violation of this Ordinance.

b. Upon placement of the lowest floor, or before pouring the columns and/or tie beam, or floodproofing by whatever construction means, it shall be the duty of the permit holder to submit to the floodplain administrator or building official a certification of the NGVD elevation of the lowest floor or floodproofed elevation, in relation to mean sea level. Said certification shall be prepared by or under the direct supervision of a registered land surveyor or professional engineer and certified by same. When floodproofing is utilized for a particular building said certification shall be prepared by or under the direct supervision of a professional engineer or architect and certified by same. Any work undertaken prior to submission of the certification shall be at the permit holder's risk. The floodplain administrator shall review the lowest floor and floodproofing elevation survey data submitted. The permit holder shall correct violations detected by such review immediately and prior to further progressive work being permitted. Failure to submit the survey or failure to make said corrections required hereby shall be cause to issue a stop-work order for the project, or to initiate other appropriate enforcement action as warranted.

Section 5. AMENDMENT: Section 30-86 of the City of Miami Gardens Code of Ordinances is hereby amended as follows:

Sec. 30-86. – Same- Duties.

(a) The board shall hear and decide appeals when it is alleged an error in any requirement, decision, or determination is made by the public works director or floodplain administrator in the enforcement or administration of this article.

(b) Any person aggrieved by any action of decision of the director of public works or floodplain administrator may appeal that decision by filing a written notice of appeal within 15 days after the date of the board action or decision. This notice shall set forth concisely the action or decision appealed and the reasons or grounds for the appeal.

(c) The ~~city manager shall designate~~ City Clerk, or his or her designee, shall serve as ~~a member of his staff~~ ~~as~~ ~~is~~ the clerk of the board. Upon receipt of a timely filed appeal, the clerk of the board shall set such appeal for hearing at the earliest possible date, and cause notice thereof to be served upon the appellant and the director of public works. The board shall hear and consider all facts material to the appeal and render a decision promptly. The decision shall be in writing and shall be promptly mailed to the appellant. The board may affirm, reverse or modify the action of decision appealed, provided that the board shall not take any action, which conflicts with or nullifies any of the provisions of this article. The words "action" and "decision" as used in the subsection shall not include the filing of any action by the city in any court.

Section 6. CONFLICT: All ordinances or Code provisions in conflict herewith are hereby repealed.

Section 7. SEVERABILITY: If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be

deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions of this Ordinance.

Section 8. INCLUSION IN CODE: It is the intention of the City Council of the City of Miami Gardens that the provisions of this Ordinance shall become and be made a part of the Code of Ordinances of the City of Miami Gardens and that the section of this Ordinance may be renumbered or relettered and the word "Ordinance" may be changed to "Chapter," "Section," "Article" or such other appropriate word or phrase, the use of which shall accomplish the intentions herein expressed.

Section 9. EFFECTIVE DATE: This Ordinance shall become effective immediately upon its final passage.

PASSED ON FIRST READING ON THE 6TH DAY OF JULY, 2011.

PASSED ON SECOND READING ON THE 5TH DAY OF OCTOBER, 2011.

ADOPTED AND PASSED BY THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS AT ITS REGULAR MEETING HELD ON THE 5TH DAY OF OCTOBER, 2011.

SHIRLEY GIBSON, MAYOR

ATTEST:

RONETTA TAYLOR, MMC, CITY CLERK

Ordinance No. 2011-22-264

PREPARED BY: SONJA KNIGHTON DICKENS, ESQ., CITY ATTORNEY

SPONSORED BY: DR. DANNY O. CREW, CITY MANAGER

Moved by: Councilman Gilbert
Second by: Councilwoman Robinson

VOTE: 6-0

Mayor Shirley Gibson	__X__ (Yes)	____ (No)
Vice Mayor Aaron Campbell, Jr.	__X__ (Yes)	____ (No)
Councilman David Williams Jr.	_____ (Yes)	____ (No) (not present)
Councilwoman Lisa Davis	__X__ (Yes)	____ (No)
Councilman Oliver Gilbert, III	__X__ (Yes)	____ (No)
Councilwoman Felicia Robinson	__X__ (Yes)	____ (No)
Councilman Andre' Williams	__X__ (Yes)	____ (No)

City of Miami Gardens
Agenda Cover Memo

Council Meeting Date:	**October 5, 2011**		**Item Type:** *(Enter X in box)*	**Resolution**	**Ordinance**	**Other**	
					X		
Fiscal Impact: *(Enter X in box)*	**Yes**	**No**	**Ordinance Reading:** *(Enter X in box)*		**1st Reading**	**2nd Reading**	
						x	
		X	**Public Hearing:** *(Enter X in box)*		**Yes**	**No**	**Yes**	**No**
					x			
Funding Source:	**N/A**		**Advertising Requirement:** *(Enter X in box)*		**Yes**	**No**	
					x		
Contract/P.O. Required: *(Enter X in box)*	**Yes**	**No**	**RFP/RFQ/Bid #:**				
		X					
Strategic Plan Related *(Enter X in box)*	**Yes**	**No**	**Strategic Plan Priority Area:**		**Strategic Plan Obj./Strategy:** *(list the specific objective/strategy this item will address)*		
		X	**Enhance Organizational** ☐ **Bus. & Economic Dev** ☐ **Public Safety** ☐ **Quality of Education** ☐ **Qual. of Life & City Image** ☐ **Communication** ☐				
Sponsor Name	**Dr. Danny Crew, City Manager**		**Department:**		**Public Works**		

Short Title:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS, FLORIDA, AMENDING SECTION 30-6 OF THE CITY'S CODE OF ORDINANCES RELATING TO FLOODS; AMENDING SECTION 30-16 ENTITLED "PROHIBITIONS"; AMENDING SECTION 30-36 ENTITLED "PERMIT PROCEDURES"; AMENDING SECTION 30-86 ENTITLED "SAME-DUTIES"; PROVIDING FOR THE ADOPTION OF REPRESENTATIONS; REPEALING ALL ORDINANCES IN CONFLICT; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR INCLUSION IN CODE; PROVIDING FOR AN EFFECTIVE DATE

Staff Summary:

Background

The City of Miami Gardens adopted its Floodplain Ordinance #2009-20-192 on September 8, 2009. This Ordinance ensures that residents and businesses are protected from potential damage that flood events can cause, and ensures the City's continual participation in the National Flood Insurance Program.

Current Situation

ITEM 9-B) ORDINANCE
SECOND READING/PUBLIC HEARING
Flood Plain Amendments

1515 NW 167 Street, Building 5 Suite 200
Miami Gardens, Florida 33169

These propose amendments correct scrivener's errors in the original Ordinance #2009-20-192, adds language from Amendment Ordinance # 2009-29-201, and strengthens the language of the Code to ensure compliance with information provided on building permits.

Proposed Action:

The Public Works Department recommends approval of these amendments to Ordinance #2009-20-192.

Attachment:

Attachment A – Amended Ordinance

CITY OF MIAMI GARDENS

FLOODPLAIN MANAGEMENT ORDINANCE

ORDINANCE NO. 2009-20-192

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ARTICLE I. STATUTORY AUTHORIZATION, FINDINGS OF FACT, PURPOSE, AND OBJECTIVES

SECTION A. STATUTORY AUTHORIZATION

The Legislature of the State of Florida has authorized and delegated in Chapter 166, Florida Statutes, the responsibility of local government units to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry. Therefore, the City Council of the City of Miami Gardens does hereby adopt the following floodplain management regulations.

SECTION B. FINDINGS OF FACT

1) The flood hazard areas of the City are subject to periodic inundation, which results in loss of life and property, health and safety hazards, disruption of commerce and government 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.
2) These flood losses and damage to the City are caused by: The cumulative effect of obstructions in floodplains causing increases in flood heights and velocities; The occupancy in flood hazard areas of uses vulnerable to floods or hazardous to other lands**,** or which are inadequately elevated, flood-proofed, or otherwise unprotected from flood damages; And flooding caused by tropical weather systems, hurricanes, and other severe weather.

SECTION C. STATEMENT OF PURPOSE

1) It is the purpose of this ordinance to promote the public health, safety and general welfare and to minimize public and private losses due to flood conditions in specific areas by creating provisions designed to:
    a. Restrict or prohibit uses which are dangerous to health, safety and property due to water or erosion hazards, which result in damaging increases in erosion or in flood heights and velocities;

b. Require that uses vulnerable to floods, including facilities which serve such uses be protected against flood damage throughout their intended life span;
c. Control the alteration of natural floodplains, stream channels, and natural protective barriers which are involved in the accommodation of flood waters;
d. Control filling, grading, dredging and other development which may increase erosion or flood damage; and
e. Prevent or regulate the construction of flood barriers which will unnaturally divert floodwaters or which may increase flood hazards to other lands.

SECTION D. OBJECTIVES

The objectives of this Ordinance are to:

1) Protect human life and health, and to eliminate or minimize property damage;
2) Minimize 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 and sewer lines, roadways, bridges and culverts located in floodplains;
6) Maintain a stable tax base by providing for the sound use and development of flood prone areas in such a manner as to minimize flood blight areas;
7) Ensure that potential homebuyers are notified that property is in a Special Flood Hazard Area;
8) Comply with the standards of the National Flood Insurance Act and Federal Insurance Program; and
9) Provide for the continued availability of flood insurance for residents and Businesses in the City.

SECTION E. EFFECTIVE DATE OF NEW ORDINANCE

The provisions of this ordinance shall become effective upon the date of execution by the City Council. However, the provisions of this ordinance shall not apply to those buildings for which a building permit has been issued and is in effect prior to the execution date of this ordinance, provided that construction under the permit shall be commenced and progressively carried to a conclusion within 180 days of permit approval, or where an extension may be granted, within the time limits of that extension. For those buildings, Chapter 11C of the Code of Miami-Dade County, as adopted by reference by the City of Miami Gardens, shall apply.

ARTICLE II. 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.

Accessory structure (Appurtenant structure) means a structure that is located on the same parcel of property as the principal structure and the use of which is incidental to the use of the principal structure. Accessory structures should constitute a minimal investment, may not be used for human habitation, and shall be designed to have minimal flood damage potential.

Appeal means a request for a review of a decision of the director of public works or the floodplain administrator as it relates to interpretation of any provision of this ordinance.

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

Area of special flood hazard or Special Flood Hazard Area is the land in the floodplain within the city subject to a one- percent or greater chance of flooding in any given year.

Base flood means the flood having a one percent chance of being equaled or exceeded in any given year (also called the “100-year flood” and the “regulatory flood”).

Base Flood Elevation means the water-surface elevation associated with the base flood; Referred to as BFE throughout this ordinance.

Basement means any portion of a building having its floor sub-grade (below ground level) on all sides.

Building – see **Structure**.

Building Official means the person at the city who has the chief responsibility for enforcement of the Building Code.

Crown of Road *(*Center Line) shall mean a line running parallel with the street right-of-way, which is half the distance between the extreme edges of the official right-of-way width as shown on a map approved by the City Department of Public Works or appropriate jurisdiction.

Datum means a reference surface used to ensure that all elevation records are properly related. The current national datum and the datum used in the city for the purpose of this ordinance is the National Geodetic Vertical Datum (NGVD) of 1929, which is expressed in relation to mean sea level.

Development means any fabricated 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 storage of materials or equipment.

Elevated building means a non-basement building built to have the lowest floor elevated above the ground level by foundation walls, posts, piers, columns, pilings, or shear walls.

Elevation Certificate means a document, signed and sealed by a licensed and registered land surveyor, which provides elevation information necessary to demonstrate compliance with this ordinance, and to properly rate structures for flood insurance.

Encroachment means the advance or infringement of uses, plant growth, fill, excavation, buildings, permanent structures or development into a floodplain, canal or other body of water**,** which may impede or alter the flow capacity of a floodplain or that canal or body of water.

Existing Construction means, for the purposes of floodplain management, structures for which "the start of construction" commenced before the date of the adoption of this ordinance. Existing construction, for the purposes of determining flood insurance rates, means structures for which the "start of construction" commenced before the effective date of the first FIRM or before January 1, 1975, for FIRMs effective before that date. This term may also be referred to as "existing structures".

Existing or Natural Grade means the elevation of the ground surface prior to any fabricated change, such as filling, cutting, or other development activities.

Existing manufactured home park or subdivision means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of this ordinance.

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

FEMA is defined as the Federal Emergency Management Agency; FEMA is part of the Department of Homeland Security, and amongst other duties is responsible for enforcing provisions of the National Flood Insurance Program.

Flood or flooding means:

A) 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.
3. Mudslides (i.e., mudflows) which are proximately caused by flooding as defined in paragraph (A) (2) of this definition and are akin to a river of liquid and flowing mud on the surface of normally dry land areas, as when earth is carried by a current of water and deposited along the path of the current.

B) The collapse or subsidence of land along a shore of a lake or other body of water as the result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm or by an unanticipated force of nature, such as a flash flood or an abnormal tidal surge or by some similarly unusual and unforeseeable event which results in flooding as defined in paragraph (A) (1) of this definition.

Flood Insurance Rate Map (FIRM) means an official map of the city, issued by FEMA, which delineates both the areas of special flood hazard and the risk premium zones applicable to the city.

Flood Insurance Study (FIS) is the official hydraulic & hydrology report provided by FEMA. This study forms the basis for the creation of the accompanying FIRM. The study contains an examination, evaluation, and determination of flood hazards, and, if appropriate, corresponding water-surface elevations, or an examination, evaluation, and determination of mudslide (i.e., mudflow) and other flood-related erosion hazards.

Floodplain means any land area susceptible to being inundated by water from any source (see definition of “flooding”).

Floodplain Administrator is the individual appointed to administer and enforce this ordinance.

Floodplain management means the operation of an overall program of corrective and preventive measures for reducing flood damage and preserving and enhancing, where

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

Floodplain management regulations means this ordinance and other zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as floodplain ordinance, grading ordinance, and erosion control ordinance), and other applications of police power which control development in flood-prone areas. This term describes federal, state of Florida, or local regulations in any combination thereof, which provide standards for preventing and reducing flood loss and damage.

Floodproofing means any combination of structural and non-structural additions, changes, or adjustments to structures, which reduces or eliminates flood damage to real estate or improved real property, water and sanitary facilities, and structures and their contents.

Floodproofing Certificate is a document, signed and sealed by a licensed surveyor or architect that documents all floodproofing designs, methods and elevations for a structure.

Freeboard means the additional height, usually expressed as a factor of safety in feet, above a flood level for purposes of floodplain management. Freeboard tends to compensate for many unknown factors, such as wave action, blockage of bridge openings and hydrological effects of urbanization of the watershed that could contribute to flood heights greater than the heights calculated for a selected frequency flood and floodway condition.

Functionally dependent use means a use that cannot be used for 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 or ship repair. The term does not include long-term storage, manufacture, sales, or service facilities.

Hardship as related to variances from this ordinance means the exceptional difficulty associated with the use of the land that would result from a failure to grant the requested variance. A variance must be exceptional, unusual, and peculiar to the

property involved. Mere economic or financial hardship alone is not exceptional. Inconvenience, aesthetic considerations, physical handicaps, personal preferences, or the disapproval of one's neighbors will not qualify as an exceptional hardship. All of these problems can be resolved through other means without granting a variance, even if the alternative is more expensive, or requires the property owner to build elsewhere or put the parcel to a different use than originally intended.

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

Historic Structure means any structure that is:

A) 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:

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

C) Individually listed on the Florida inventory of historic places, which has been approved by the Secretary of the Interior; or

D) Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:

   1. By the approved Florida program as determined by the Secretary of the Interior, or

   2. Directly by the Secretary of the Interior.

Lowest adjacent grade means the lowest elevation, after the completion of construction, of the ground, sidewalk, patio, deck support, or basement entryway immediately next to the structure.

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

Mangrove Stand means an assemblage of mangrove trees which are mostly low trees noted for a copious development of interlacing adventitious roots above ground and which contain one or more of the following species: Black mangrove (Avicennia Nitida); red mangrove (Rhizophora mangle); white mangrove (Languncularia Racemosa); and buttonwood (Conocarpus Erecta).

Manufactured home means a building, transportable in one 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 180 consecutive days or longer and intended to be improved property.

Manufactured home park or subdivision means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

Market value means the property value excluding the land value and that of the detached accessory structures and other improvements on site, as established by what the local real estate market will bear. Market value can be established by an independent certified appraisal (other than a limited or curbside appraisal, or one based on income approach), Actual Cash Value (replacement cost depreciated for age and quality of construction of building), adjusted tax-assessed values, or other reasonable methods as determined by the floodplain administrator.

Mean Sea Level means the average height of the sea for all stages of the tide. It is used as a reference for establishing various elevations within the floodplain. For purposes of this ordinance, the term is synonymous with National Geodetic Vertical Datum (NGVD) of 1929.

Miami-Dade County Flood Criteria Maps shall mean the official maps of Miami-Dade County showing the required minimum finished grade elevations of the ground surface within a development site, and as adopted by the Board of County Commissioners and recorded in Plat Book 120 at Page 13-1, 13-2, 13-3, 13-4 and 13-5 of the Public Records of Miami-Dade County, as same may be amended from time to time.

National Geodetic Vertical Datum (NGVD) of 1929 means a vertical control used as a reference for establishing varying elevations within the floodplain.

New Construction means, for floodplain management purposes, any structure for which the "start of construction" commenced on or after June 18, 1974, which is the effective date of the initial floodplain management code, ordinance, or standard based upon specific technical base flood elevation data that establishes the area of special flood hazard. The term also includes any subsequent improvements to such structures. For flood insurance rates, new construction shall mean structures for which the start of construction commenced on or after the effective date of the date of an initial FIRM or after December 31, 1974, whichever is later. This definition includes any subsequent improvements to such structures.

New manufactured home park or subdivision means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of the first floodplain management code, ordinance or standard.

Operational and Maintenance Plans are defined as the procedures a facility will use to ensure that the certified flood-proofing methods are used when an emergency occurs, and that the components of the flood-proofing method are maintained and tested regularly, to be ready for use in such an emergency.

Recreational vehicle means a vehicle that is:

A) Built on a single chassis;

B) 400 square feet or less when measured at the largest horizontal projection;

C) Designed to be self-propelled or permanently towable by a light duty truck; and

D) Designed primarily as temporary living quarters for recreational, camping, travel, or seasonal use, and not for use as a permanent dwelling.

Regulatory Flood shall mean the flood that has a one percent (1%) chance of being equaled or exceeded in any given year (also called the "100 year flood" or "base flood").

Riverine means relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.

Sand dune means naturally occurring accumulations of sand in ridges or mounds landward of the beach or other bodies of water.

Shallow flooding means the same as area of shallow flooding.

Special Flood Hazard Area means the same as area of special flood hazard.

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 180 days of the permit date. The actual start means the first placement of permanent construction of a building (including a manufactured home) on a site, such as the pouring of slabs or footings, installation of piles, construction of columns, or any work beyond the stage of excavation or 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 building. For substantial improvement, the actual start of construction means the date of 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.

Stormwater Runoff means natural rainfall after it has hit pervious or impervious ground surfaces. Stormwater runoff can sheet flow or be channeled or diverted to pervious ground surfaces, stormwater management systems, or can be disposed of by other legal or permitted means.

Stormwater Management System is any system that is designed to retain, treat, properly dispose of or otherwise manage stormwater runoff.

Structure means for floodplain management purposes a walled and roofed building, including gas or liquid storage tank that is principally above ground, as well as a manufactured home.

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

Substantial improvement means any combination of reconstruction, rehabilitation, renovation, addition, or other improvement of a structure, the cumulative cost of which equals or exceeds 50 percent of the market value of the structure before the "start of construction" of the improvement. The cumulative cost shall be tracked by the City for 180 days from issuance of the Building Permit. ~~the start of construction~~. This term includes structures that have incurred "substantial damage" regardless of the actual repair work performed. This term does not, however, include any repair or improvement of a structure to correct existing violations of State of Florida or local health, sanitary, or safety code specifications, which have been identified by the local code enforcement official prior to the application for permit for improvement, and which are the minimum necessary to assure safe living conditions.

Substantially improved existing manufactured home parks or subdivisions is where the repair, reconstruction, rehabilitation or improvement of the streets, utilities and pads equals or exceeds 50 percent of the value of the streets, utilities and pads before the repair, reconstruction or improvement commenced.

Variance is a grant of relief from the requirements of this ordinance.

Violation means the failure of a structure, other development or any action or work initiated to be fully compliant with the requirements of this ordinance. A structure or other development without the Elevation Certificate, other certifications, or other evidence of compliance required in this ordinance is presumed to be in violation until such time as that documentation is provided.

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

Water-surface elevation means the height, in relation to the National Geodetic Vertical Datum (NGVD) of 1929 of floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas.

ARTICLE III. GENERAL PROVISIONS

SECTION A. LANDS TO WHICH THIS ORDINANCE APPLIES

This ordinance shall apply to all areas within the geographical boundary of the City.

SECTION B. BASIS FOR ESTABLISHING THE AREAS OF SPECIAL FLOOD HAZARD

The Special Flood Hazard Areas identified by the Federal Emergency Management Agency in the Flood Insurance Study (FIS) for the City, dated March 2, 1994, and including the FIRM Index date July 17, 1995, with the accompanying maps and other supporting data, and any subsequent revisions thereto, are adopted by reference and declared to be a part of this ordinance. The Flood Insurance Study and Flood Insurance Rate Map are on file at the Public Works Department.

SECTION C. DESIGNATION OF FLOODPLAIN ADMINISTRATOR

The City Council of the City hereby appoints the Public Works Director or his designee, the floodplain administrator, to administer and implement the provisions of this ordinance, and is herein referred to as the floodplain administrator.

SECTION D. ESTABLISHMENT OF BUILDING PERMIT

A Building permit shall be required in conformance with the provisions of this ordinance prior to the commencement of any development activities.

SECTION E. COMPLIANCE

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

SECTION F. ABROGATION AND GREATER RESTRICTIONS

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

SECTION G. INTERPRETATION

In the interpretation and application of this ordinance 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 of Florida statutes.

SECTION H. 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 consideration. Larger floods can and will occur on rare occasions. Flood heights may be increased by fabricated 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 damages. This ordinance shall not create liability on the part of The City Council of Miami Gardens or by any officer or employee thereof for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made thereunder.

SECTION I. PENALTIES FOR VIOLATION

1) Violation of the provisions of this ordinance or failure to comply with any of its requirements, including violation of conditions and safeguards established in connection with grants of variance or special exceptions, shall be punishable as a non-criminal violation. Any person who violates this ordinance or fails to comply with any of its requirements shall, upon adjudication therefore, be fined not more than $500 per violation, and in addition, shall pay all costs and expenses involved in the case. Each day that such violation continues shall be considered a separate offense. Hearings to dispute such violations shall be

heard before a Code Enforcement Special Master in accordance with Ordinance No. 2004-11-27, the city's Code Enforcement Ordinance.

2) Nothing herein contained shall prevent the city from taking such other lawful actions as is necessary to prevent or remedy any violation. Lawful actions may include but are not limited to stop work orders, issuance of Notices of Violation, injunctive relief, or other appropriate enforcement actions.

SECTION J. PROHIBITIONS

1) It shall be unlawful and a violation of this ordinance to dispose of any rainwater, stormwater runoff or other liquids by causing or allowing same to flow on, over or across any adjoining property, sidewalk, easement or right-of-way, either public or private. Such discharges shall be properly retained on the property where they originate or fall. Exceptions to this condition may be allowed on a limited basis for necessary repairs or refinishing of swimming pools, based on a case-by-case review and approval by the City Department of Public Works.

2) It shall be unlawful and a violation of this ordinance to encroach on or into any secondary or private canals, canal maintenance easements, or other surface waters within the City boundaries without the review and approval of the City's Department of Public Works.

3) For any new construction or substantial improvement, it shall be unlawful and a violation of this ordinance for any party to lower the elevation or otherwise cut down any existing or natural grades on a building site. An exception to this condition can consist of placement of stormwater management systems, as may be required by the City, Miami-Dade County, or South Florida Water Management District.

4) It shall be unlawful and a violation of this Ordinance to allow discharges of any product, waste, litter, debris, or other materials other than stormwater runoff into stormwater management systems or bodies of water within the geographical boundary of the City. Limited exceptions to this prohibition may be permitted by the City, based on a review and approval by the Public Works Department.

ARTICLE IV. ADMINISTRATION

SECTION A. PERMIT PROCEDURES

Application for a Building Permit shall be made to the City Building Department (Building) on forms furnished by Building prior to any development activities, including placement of manufactured homes, and may include, but not be limited to, the following plans in duplicate drawn to scale showing the nature, location, dimensions, and elevations of the area in question; existing or proposed structures, earthen fill, storage of materials or equipment, drainage facilities, and the locations of the foregoing.

Specifically, the following information is required, but is not necessarily limited to:

1) Application Stage:

   a) Proposed elevation of the lowest floor that meets or exceeds in height the highest of the following elevations:

      i) Highest adjacent crown-of-road plus 8”

      ii) Miami-Dade County Flood Criteria plus 8”

      iii) Base Flood Elevation as depicted on the current FIRM

   b) Proposed elevations of all machinery, utilities and equipment servicing the structure, demonstrating compliance with the criteria established in Section A. (1) a)

   c) Proposed elevation of the lowest adjacent grade of the exterior of the structure

   d) A Sediment and Erosion Control Plan that includes appropriate and adequate Best Management Practices to retain sediment and stormwater runoff on a construction site, and prevent erosion at such site.

   e) A Stormwater Management Plan that demonstrates on-site retention of stormwater runoff.

   f) Proposed elevation in relation to mean sea level to which any non-residential building will be flood-proofed;

   g) Certificate from a registered professional engineer or architect that the non-residential flood-proofed building will meet the flood-proofing criteria in Article 5, Section B (2); and

   h) Description of the extent to which any watercourse will be created, altered or relocated as a result of proposed development.

   i) For accessory structures, the lowest floor shall be elevated to a minimum of 4” above the highest adjacent grade. For accessory structures placed in Special Flood Hazard Areas, the design requirements in Article V, Section B (3) shall apply.

2) Construction Stage:

a) Upon start of construction, the permit holder shall have in place the Sediment and Erosion Control Plan as approved in Article IV, Section A 1) d) of this Ordinance. Failure to comply with conditions of this approved Plan during construction shall be considered a violation of this Ordinance.

b) Failure to comply with the approved Stormwater Management Plan as submitted and approved in Article IV, Section A 1) e) shall be considered a violation of this Ordinance.

c) Upon placement of the lowest floor, or before pouring the columns and/or tie beam, or flood-proofing by whatever construction means, it shall be the duty of the permit holder to submit to the floodplain administrator or Building Official a certification of the NGVD elevation of the lowest floor or flood-proofed elevation, in relation to mean sea level. Said certification shall be prepared by or under the direct supervision of a registered land surveyor or professional engineer and certified by same. When flood-proofing is utilized for a particular building said certification shall be prepared by or under the direct supervision of a professional engineer or architect and certified by same. Any work undertaken prior to submission of the certification shall be at the permit holder's risk. The floodplain administrator shall review the lowest floor and flood-proofing elevation survey data submitted. The permit holder shall correct violations detected by such review immediately and prior to further progressive work being permitted. Failure to submit the survey or failure to make said corrections required hereby shall be cause to issue a stop-work order for the project, or to initiate other appropriate enforcement action as warranted.

3) Completion of construction phase

a) Upon completion of the project, after final grading and landscaping has been completed, it shall be the duty of the permit holder to submit to the floodplain administrator a signed and sealed Elevation Certificate showing NGVD elevations that demonstrate compliance with all elevations proposed in the Permit Application, and all elevation requirements established in this ordinance. The permit holder shall correct all deficiencies noted in the Certificate prior to issuance of a Certificate of Occupancy or Temporary Certificate of Occupancy.

b) For those projects with approved floodproofing designs, a signed and sealed as-built Floodproofing Certificate shall be submitted to the

floodplain administrator. Said Certificate must demonstrate compliance with this Ordinance and with the approved floodproofing design Certificate submitted at the Application Phase of development. Said Certificate must also include operational and maintenance plans as defined in this ordinance. Correction to any deficiencies noted in this Certificate must be corrected before issuance of a Certificate of Occupancy or Temporary Certificate of Occupancy.

SECTION B. DUTIES AND RESPONSIBILITIES OF THE FLOODPLAIN ADMINISTRATOR

Duties of the floodplain administrator shall include, but are not limited to:

1) Review permits to assure the proposed project and adjacent properties are reasonably safe from flooding;
2) Review all development permits to assure that the permit requirements of this ordinance have been satisfied;
3) Require copies of additional Federal, State of Florida, or local permits, especially as they relate to Sections 161.053, 320.8249, 373.036, 380.05, 381.0065, and Chapter 553, Part IV (Florida Building Code), Florida Statutes;
4) Notify adjacent communities, the state Division of Emergency Management, Miami-Dade County, the South Florida Water Management District, the Federal Emergency Management Agency and other Federal and/or State of Florida agencies with statutory or regulatory authority prior to any creation, alteration or relocation of a watercourse;
5) Assure that maintenance is provided within the altered or relocated portion of said watercourse so that the flood-carrying capacity is maintained;
6) Verify and record the actual elevation (in relation to mean sea level) of the lowest floor of all new or substantially improved buildings, in accordance with Article 4, Section A;
7) Verify and record the actual elevation (in relation to mean sea level) to which the new or substantially improved buildings have been flood-proofed, in accordance with Article 4, Section A;
8) Review certified plans and specifications for compliance. When flood-proofing is utilized for a particular building, certification shall be obtained from a registered engineer or architect certifying that all areas of the building below the required

elevation are water tight with walls substantially impermeable to the passage of water, and use structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy in compliance with Article 5, Section B (2) of this ordinance;

9) Interpret the exact location of boundaries of Special Flood Hazard Areas. When there appears to be a conflict between a mapped boundary and actual field conditions, the floodplain administrator shall make the necessary interpretation. The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in this ordinance;

10) When base flood elevation data has not been provided in accordance with Article 3, Section B, the floodplain administrator shall, at his or her option**,** obtain, review and reasonably utilize any base flood elevation and floodway data available from a Federal, State of Florida, or any other source, in order to administer the provisions of Article 5, or may require this information from the Permittee;

11) Coordinate all change requests to the FIS and FIRM with the requester, State of Florida, Miami-Dade County and FEMA, and

12) Where Base Flood Elevation is utilized, obtain and maintain records of lowest floor and floodproofing elevations for new construction and substantial improvements in accordance with Article 5, Sections B (1) and (2), respectively.

ARTICLE V. PROVISIONS FOR FLOOD HAZARD REDUCTION

SECTION A. GENERAL STANDARDS

In all areas of the City, all development sites including new construction and substantial improvements shall be reasonably safe from flooding, and meet the following provisions:

1) New construction and substantial improvements shall be designed or modified and adequately anchored to prevent flotation, collapse and lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;

~~1)~~ 2)Manufactured homes shall be anchored to prevent flotation, collapse, and lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors;

3) New construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage for all areas below the base flood elevation;

4) New construction and substantial improvements shall be constructed by methods and practices that minimize flood damage, both to the proposed structure and surrounding properties. Electrical, heating, ventilation, plumbing, air conditioning equipment and other service facilities, including duct work, 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 systems into flood or ground waters;

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

8) Any alteration, repair, reconstruction or improvements to a building that is in compliance with the provisions of this Ordinance shall meet the requirements of "new construction" as contained in this ordinance;

9) Any alteration, repair, reconstruction or improvements to a building that is not in compliance with the provisions of this ordinance, shall be undertaken only if said non-conformity is not furthered, extended, or replaced;

10) All applicable additional Federal, State of Florida, and local permits shall be obtained and submitted to The City's Building Department. Copies of such permits shall be maintained on file with the building permit. State of Florida permits may include, but not be limited to the following:

    a) South Florida Water Management District(s): in accordance with Section 373.036 (2)(a) Florida Statutes, Flood Protection and Floodplain Management.

    b) Department of Community Affairs: in accordance with Section 380.05, Florida Statutes, Areas of Critical State Concern, and Chapter 553, Part IV Florida Statutes, Florida Building Code.

    c) Department of Health: in accordance with Section 381.0065, Florida Statutes, Onsite Sewage Treatment and Disposal Systems.

    d) Department of Environmental Protection, Coastal Construction Control Line: in accordance with Section 161.053 Florida Statutes, Coastal Construction and Excavation.

11) Standards for subdivision proposals and other proposed development (including manufactured homes):

a) Such proposals shall be consistent with the need to minimize flood damage, both within the site and to properties adjacent to the site**;**

b) Subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize or eliminate flood damage;

c) Proposals shall have adequate drainage provided to retain stormwater runoff within the project site, to reduce exposure to flood hazards for the proposed structures and adjacent properties;

d) Require base flood elevation data from the Applicant for subdivision proposals greater than fifty (50) lots or five (5) acres.

12) The following disclosure shall be required to be included in contracts for sale of real estate:

In any contract for the sale of improved real estate located in the City that is in a Special Flood Hazard Area, the seller shall include in the contract or a rider to the contract the following disclosure in not less than ten-point bold-faced type:

THIS HOME OR STRUCTURE IS LOCATED IN A SPECIAL FLOOD HAZARD AREA. IF THIS HOME OR STRUCTURE IS BELOW THE APPLICABLE FLOOD ELEVATION LEVEL AND IS SUBSTANTIALLY DAMAGED OR SUBSTANTIALLY IMPROVED, AS DEFINED IN THE CITY OF MIAMI GARDENS FLOODPLAIN MANAGEMENT ORDINANCE, IT MAY, AMONG OTHER REQUIREMENTS, BE REQUIRED TO BE RAISED TO THE CURRENT FLOOD ELEVATION LEVEL AS DEPICTED IN SAID ORDINANCE .

13) For all proposed development, when the proposal falls within a Special Flood Hazard Area having more than one BFE, the most stringent of the BFE's shall be used, as referenced in Article 4, Section A of this ordinance.

14) For all proposed development, and when the City provides flood hazard information to the public, it is a City determination that when any portion of a proposed structure falls within a Special Flood Hazard Area (SFHA), the entire structure is considered to be within the SFHA, and must comply with the standards specified for that SFHA.

SECTION B. SPECIFIC STANDARDS.

In all A-Zones where base flood elevation data have been provided (Zones AE, A1–30, and AH), as set forth in Article 3, Section B, and in addition to Article 5, Section A, the following provisions shall apply:

1) *Residential Construction*. All new construction and substantial improvement of any residential building, including manufactured home shall at a minimum have the lowest floor, including basement, elevated to the base flood elevation, and in accordance with the standards of Article 4, Section A of this ordinance. Should solid foundation perimeter walls be used to elevate a structure, for those enclosed areas below the base flood elevation there must be a minimum of two openings on different sides of each enclosed area sufficient to facilitate automatic equalization of flood hydrostatic forces in accordance with standards of Article 5, Section B (3).

2) *Non-Residential Construction*. All new construction or substantial improvement of any commercial, industrial, or non-residential building (including manufactured home) shall have the lowest floor, including basement, elevated to the base flood elevation, and in accordance with the standards of Article 4, Section A of this ordinance. All non-residential buildings located in the City may be flood-proofed, in lieu of being elevated, provided that all areas of the building components below the base flood elevation plus one foot, and as required in Article 4, Section A are water tight with walls substantially impermeable to the passage of water, and use structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy. A registered professional engineer or architect shall certify that the standards of this subsection are satisfied by using the FEMA Floodproofing Certificate. Such certification along with the corresponding engineering data, and the Operational and Maintenance Plans shall be provided to the floodplain administrator.

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

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

i) Provide a minimum of two openings on different sides of each enclosed area having a total net area of not less than one square inch for every square foot of enclosed area;

ii) The bottom of all openings shall be no higher than one foot above adjacent interior grade (which must be equal to or higher in elevation than the adjacent exterior grade);

iii) Openings may be equipped with screens, louvers, valves, or other coverings or devices provided they provide the required net area of the openings and permit the automatic flow of floodwaters in both directions;

iv) Electrical, plumbing and other utility connections are prohibited below the base flood elevation, and

v) The interior portion of such enclosed area shall not be partitioned or finished into separate rooms.

b) Fully enclosed areas below the base flood elevation shall be used solely for parking of vehicles, storage, and building access. Access to the enclosed area shall be the minimum necessary to allow for parking of vehicles (garage door), limited storage of maintenance equipment used in connection with the premises (standard exterior door), or entry to the living area (stairway, foyer or elevator);

c) A non-conversion agreement will be required to be signed by the property owner for all new construction that includes enclosed areas below the base flood elevation. This agreement shall include but not be limited to the following: “I hereby understand and agree as the owner of this property that enclosed areas that are below the base flood elevation are to be used only for parking, access and storage. I agree not to improve, finish or otherwise convert any enclosed areas below the required elevation to habitable or living space. I understand and agree that the City of Miami Gardens reserves the right to inspect such enclosures for compliance with this provision. I understand that this Agreement will be recorded with the Clerk of the Courts of Miami-Dade County.”

4) Standards for Manufactured Homes and Recreational Vehicles

a) All manufactured homes that are placed, or substantially improved within Zones A1-30, AH, and AE, on sites (i) outside of an existing 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, (iv) in an existing manufactured home park, or (v) in a subdivision on which a manufactured home has incurred “substantial damage” as the result of a flood, shall have the lowest floor elevated on a permanent foundation to the base flood elevation and be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement.

b) All recreational vehicles placed on sites within Zones A1-30. AH, and AE must either:

i) Be on the site for fewer than 180 consecutive days,

ii) 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

iii) Meet all the requirements for new construction, including anchoring and elevation requirements in accordance with Article 4A and 5A.

5) Adequate drainage, including on site retention and proper disposal of stormwater runoff, and paths around structures shall be provided to guide water away from structures.

ARTICLE VI. VARIANCE AND APPEAL PROCEDURES.

SECTION A. DESIGNATION OF VARIANCE AND APPEALS BOARD

The City Council hereby designates itself as the Variance and Appeals Board. The Board shall hear and decide appeals of final decisions of the public works director or Floodplain Administrator, and requests for variances from the requirements of this ordinance.

SECTION B. DUTIES OF VARIANCE AND APPEALS BOARD.

1) The Board shall hear and decide appeals when it is alleged an error in any requirement, decision, or determination is made by the public works director or floodplain administrator in the enforcement or administration of this ordinance.

2) Any person aggrieved by any action of decision of the director of public works or floodplain administrator may appeal that decision by filing a written notice of appeal within 15 days after the date of the Board action or decision. This notice shall set forth concisely the action or decision appealed and the reasons or grounds for the appeal.

3) The City Manager shall designate the City Clerk ~~a member of his staff~~ as the Clerk of the Board. Upon receipt of a timely filed appeal, the Clerk of the board shall set such appeal for hearing at the earliest possible date, and cause notice thereof to be served upon the appellant and the director of public works. The board shall hear and consider all facts material to the appeal and render a decision promptly. The decision shall be in writing and shall be promptly mailed to the appellant. The board may affirm, reverse or modify the action of decision appealed, provided that the board shall not take any action, which conflicts with or nullifies any of the provisions of this ordinance. The words "action" and "decision" as used in the subsection shall not include the filing of any action by the city in any court.

4) The board shall not have jurisdiction to reconsider the subject matter of any appeal after its' final determination unless the board determines that:

   a. There has been a material and substantial change in the circumstances.
   b. There is newly discovered evidence that could not have been discovered through the use of due diligence prior to the original hearing and that will probably change the result if a re-hearing is granted; or
   c. The board has overlooked or failed to consider something that renders the decision issued erroneous.

   The director of public works or floodplain administrator may reconsider at any time any action or decision taken by him or her, and therefore may modify such an action or decision.

5) The decision of the board shall constitute final administrative review, and no hearing or reconsideration shall be considered except as provided in subsection (4) of this section.

SECTION C. VARIANCE AND APPEALS PROCEDURES.

In acting upon such Applications and Appeals, the Board shall consider all technical evaluations, all relevant factors, standards specified in other sections of this ordinance, and shall evaluate:

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

2) The danger of 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 city;

5) The necessity to the facility of a waterfront location, where applicable;

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

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

8) The relationship of the proposed use to the comprehensive development 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 transport of sediment of the flood waters and the effects of wave action, if applicable, expected at the site;

11) The costs of providing government 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;

12) The effects of such decisions on the continued participation of the City in the National Flood Insurance Program; and

13) The effects of Variance and Appeal approvals on possible suspension or probation of the City from the National Flood Insurance Program, including flood insurance premium penalties, loss of continued availability of flood insurance and loss of disaster assistance for City residents and businesses.

SECTION D. CONDITIONS FOR VARIANCES AND APPEALS.

1) Variances and Appeals shall only be issued when there is:

   a) A showing of good and sufficient cause;

   b) A Determination that failure to grant the Variance or Appeal would result in exceptional hardship; and

   c) A determination that the granting of a Variance or Appeal will not result in increased flood heights, additional threats to public expense, create a

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

2) Variances or Appeals shall only be issued upon a determination that such action is the minimum necessary deviation from the requirements of this ordinance.

3) Variances shall not be granted after-the-fact.

4) The floodplain administrator shall maintain the records of all Variance and Appeal actions, including justification for their issuance or denial, and report variances in the community's NFIP Biennial Report or upon request to FEMA and the State of Florida, NFIP Coordinating Office.

5) The Variance and Appeals Board may place special conditions on any Variance or Appeal issued.

SECTION E. VARIANCE NOTIFICATION.

Any applicant or owner to whom a Variance is granted shall be given written notice from the Director of Public Works certifying that:

1) The issuance of a Variance to construct a structure below the base flood elevation will result in increased premium rates for flood insurance up to amounts as high as $25 for $100 of insurance coverage, and

2) Such construction below the base flood level or other non-compliance with provisions of this ordinance increases risks to life and property.

A copy of the Variance shall be recorded by the floodplain administrator in the Office of the Clerk of the Court, and shall be recorded in a manner so that it appears in the chain of title of the affected parcel of land.

SECTION F. APPEALS

Any person aggrieved by the decision of the board may appeal such decision to the Circuit Court of Miami-Dade County. Such appeal shall not be a hearing de novo, but shall be limited to the record created before the Variance and Appeals Board.

SECTION G. HISTORIC STRUCTURES.

Variances may be issued for the repair or rehabilitation of “historic” structures – meeting the definition in this ordinance – upon a determination that the proposed repair or rehabilitation will not preclude the structure’s continued designation as a “historic” structure.

Ordinance 2009-20-192, Amendment Ord. 2009-29-201