

ORDINANCE 158

AN ORDINANCE ESTABLISHING REQUIREMENTS FOR CONSTRUCTION WITHIN THE SPECIAL FLOOD HAZARD AREAS OF THE VILLAGE OF LOCH ARBOUR; ESTABLISHING PROCEDURES FOR ISSUANCE OF PERMITS FOR SUCH CONSTRUCTION; DESIGNATING THE CONSTRUCTION OFFICIAL TO ADMINISTER AND IMPLEMENT SUCH REQUIREMENTS AND PROCEDURES; PROVIDING FOR APPEAL FROM DETERMINATION OF THE CONSTRUCTION OFFICIAL AND PROVIDING FOR AND ESTABLISHING PROCEDURES FOR OBTAINING VARIANCES FROM CONSTRUCTION REQUIREMENTS.

BE IT ORDAINED by the Board of Trustees of the Village of Loch Arbour, in the County of Monmouth and State of New Jersey, on this 16th day of February, 1979, as follows:

1.1 STATUTORY AUTHORIZATION

The Legislature of the State of New Jersey has in N.J.S.A. 58:16A-57 delegated the responsibility to local governmental units to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry. Therefore, the Board of Trustees of the Village of Loch Arbour, New Jersey, does ordain as follow:

1.2 FINDINGS OF FACT

- (1) The flood hazard areas of the Village of Loch Arbour are subject to periodic inundation which results in loss of life, property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety and general welfare.
- (2) These flood losses are caused by the cumulative effect of obstructions in flood plains causing increases in flood heights and velocities, and when inadequately anchored, damage uses in other areas. Uses that are inadequately elevated, flood proofed, or otherwise protected from flood damages, also contribute to the flood loss.

1.3 STATEMENT OF PURPOSE

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 provisions designed:

- (1) To protect human life and health;
- (2) To minimize expenditures of public money for costly flood control projects;
- (3) To minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- (4) To minimize prolonged business interruptions;
- (5) To minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets and bridges located in areas of special flood hazard;
- (6) To help maintain a stable tax base by providing for the sound use and development of areas of special flood hazard in such a manner as to minimize future flood blight areas; and,
- (7) To insure that potential home buyers are notified that property is in an area of special flood hazard;
- (8) To insure that those who occupy the areas of special flood hazard assume responsibility for their actions.

1.4 METHODS OF REDUCING FLOOD LOSSES

In order to accomplish its purpose, this ordinance includes methods and provisions for:

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

Section 2.0 DEFINITIONS

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

"Appeal" means a request for a review of the Construction Official's interpretation of any provision of this ordinance or a request for a variance.

"Area of shallow flooding" means a designated A0 or V0 Zone on the Flood Insurance Rate Map (FIRM). The base flood depths range from one to three feet; a clearly defined channel does not exist; the path of flooding is unpredictable and indeterminate; and, velocity flow may be evident.

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

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

"Breakaway walls" mean any type of walls, whether solid or lattice, and whether constructed of concrete, masonry, wood, metal, plastic, or any other suitable building material which are not part of the structural support of the building and which are so designed as to breakaway, under abnormally high tides or wave action, without damage to the structural integrity of the building on which they are used or any buildings to which they might be carried by flood waters.

"Coastal high hazard area" means the area subject to high velocity waters, including but not limited to, hurricane wave wash or tsunamis. The area is designated on a FIRM as Zone V1-30.

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

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

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

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

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

"Habitable floor" means any floor usable for living purposes, which includes working, sleeping, eating, cooking or recreation, or a combination thereof. A floor used only for storage purposes is not a habitable floor.

"Mean sea level" means the average height of the sea for all stages of the tide.

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

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

"Start of construction" means the first placement of permanent construction of a structure on a site, such as the pouring of slabs or footings or any work beyond the stage of excavation. Permanent construction does not include land preparation, such as clearing, grading and filling, nor does it include the installation of streets and/or walkways; nor does it include excavation for basement, footings, piers or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not as part of the main structure. For a structure without a basement or poured footings, the "start of construction" includes the first permanent framing or assembly of the structure or any part thereof on its piling or foundation.

"Structure" means a walled and roofed building that is principally above ground.

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

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

For the purposes of this definition "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. The term does not, however, include either:

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

"Variance" is a grant of relief to a person from the requirements of this ordinance which permits construction in a manner otherwise prohibited by this ordinance.

SECTION 3.1 LANDS TO WHICH THIS ORDINANCE APPLIES

This ordinance shall apply to all areas of special flood hazard within the jurisdiction of the Village of Loch Arbour.

3.2 BASIS FOR ESTABLISHING THE AREAS OF SPECIAL FLOOD HAZARD

The areas of special flood hazard identified by the Federal Insurance Administration through a scientific and engineering report entitled "The Flood Insurance Study for the Village of Loch Arbour", with accompanying Flood Insurance Rate Maps is hereby adopted by reference and declared to be a part of this ordinance. The Flood Insurance Study is on file at the office of the Village Clerk, 550 Main Street, Loch Arbour, New Jersey.

3.3 PENALTIES FOR NON-COMPLIANCE

No structure or land shall hereafter be constructed, located, extended, converted, or altered without full compliance with the terms of this ordinance and other applicable regulations. Violations of the provisions of this ordinance by failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with conditions) shall constitute a misdemeanor. Any person who violates this ordinance or fails to comply with any of its requirements shall upon conviction thereof be fined not more than \$500.00 or imprisoned for not more than 90 days, or both, for each violation. Nothing herein contained shall prevent the Village of Loch Arbour from taking such other lawful action as is necessary to prevent or remedy any violation.

3.4 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 ordinance, easement, covenant, or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

3.5 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.
- (3) Deemed neither to limit nor repeal any other powers granted under State statutes.

3.6 WARNING AND DISCLAIMER OF LIABILITY

The degree of flood protection required by this ordinance is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes. This ordinance does not imply land outside the area of special flood hazards 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 Village of Loch Arbour or by any officer or employee thereof, or the Federal Insurance Administration for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made thereunder.

Section 4.1 ESTABLISHMENT OF DEVELOPMENT PERMIT

A Development Permit shall be obtained before construction or development begins within any area of special flood hazard established in Section 3.2. Application for a Development Permit shall be made to the Construction Official on forms furnished by him 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, fill storage of materials; drainage

facilities, and the location of the foregoing. Specifically, the following information is required:

- (1) Elevation in relation to mean sea level, of the lowest floor (including basement) of all structures.
- (2) Elevation in relation to mean sea level to which any non-residential structure has been floodproofed.
- (3) Certification by a registered professional engineer or architect that the floodproofing methods for any nonresidential structure meet the floodproofing criteria in section 5.2-2.
- (4) Description of the extent to which any watercourse will be altered or relocated as a result of proposed development.

4.2 DESIGNATION OF CONSTRUCTION OFFICIAL.

The Construction Official is hereby appointed to administer and implement this ordinance by granting or denying development permit applications in accordance with its provisions.

4.3 DUTIES AND RESPONSIBILITIES OF THE CONSTRUCTION OFFICIAL

Duties of the Construction Official shall include, but not be limited to;

4.3-1 PERMIT REVIEW

- (1) Review all development permits to determine that the permit requirements of this ordinance have been satisfied.
- (2) Review all development permits to require that all necessary permits have been obtained from those Federal, State or local governmental agencies from which prior approval is required.
- (3) Review all development permits in the coastal high hazard area of special flood hazard to determine if the proposed development alters sand dunes so as to increase potential flood damage.
- (4) Review plans for walls to be used to enclose space below the base flood level in accordance with section 5.3-2(4).

4.3-2 USE OF OTHER BASE FLOOD DATA

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

4.3-3 INFORMATION TO BE OBTAINED AND MAINTAINED NON-RESIDENTIAL CONSTRUCTION.

- (1) Obtain and record the actual elevation (in relation to mean sea level) of the lowest habitable floor (including basement) of all new or substantially improved structures, and whether or not the structure contains a basement.
- (2) For all new or substantially improved floodproofed structures
 - (i) verify and record the actual elevation (in relation to mean sea level), and
 - (ii) maintain the floodproofing certifications required in Section 4.1 (3).
- (3) In coastal high hazard areas, certification shall be obtained from a registered professional engineer or architect that the provisions of 5.3-2 (1) and 5.3-2 (2) (i) are met.
- (4) Maintain for public inspection all records pertaining to the provisions of this ordinance.

4.3-4 ALTERATIONS OF WATERCOURSES

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

4.3-5 INTERPRETATION OF FIRM BOUNDARIES

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

4.4-1 APPEAL BOARD

(1) The Board of Adjustment of the Village of Loch Arbour shall hear and decide appeals and requests for variances from the requirements of this ordinance.

(2) The Board of Adjustment shall hear and decide appeals when it is alleged there is an error in any requirement, decision, or determination made by the Construction Official in the enforcement or administration of this ordinance.

(3) Any person aggrieved by the decision of the Board of Adjustment or any taxpayer may appeal such decision to the Superior Court of New Jersey.

(4) In passing upon such applications, the Board of adjustment shall consider all technical evaluations, all relevant factors, standards specified in other sections of this ordinance, and;

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

(ii) the danger to life and property due to flooding or erosion damage.

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

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

(v) the necessity to the facility of a waterfront location, where applicable;

(vi) the availability of alternative locations, not subject to flooding or erosion damage for the proposed use;

(vii) the compatibility of the proposed use with existing and anticipated development;

(viii) the relationship of the proposed use to the comprehensive plan and flood plain management program for that area;

(ix) the safety of access to the property in times of flood for ordinary and emergency vehicles;

(x) the expected heights, velocity, duration, rate of rise and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site; and

(xi) the costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems and streets and bridges.

(5) Upon consideration of the factors listed in Section 4.4-1(4) and the purposes of this ordinance, the Board of Appeals may attach such conditions to the granting of variances as it deems necessary to further the purposes of this ordinance.

(6) The Construction Official shall maintain the records of all appeal actions and report any variances to the Federal Insurance Administration upon request.

4.4-2 CONDITIONS FOR VARIANCES

(1) Generally, variances may be issued for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing items (i-xi) in Section 4.4-1(4) have been fully considered. As the lot size increases beyond one-half acre, the technical justification required for issuing the variance increases.

(2) Variances may be issued for the reconstruction, rehabilitation or restoration of structures listed on the National Register of Historic Places or the state Inventory of Historic Places, without regard to the procedures set forth in the remainder of this section.

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

(4) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

(5) Variances shall only be issued upon;

(i) a showing of good and sufficient cause,

- (ii) a determination that failure to grant the variance would result in exceptional hardship to the applicant, and
- (iii) a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public as identified in Section 4.4-1(4), or conflict with existing local laws or ordinances.

(6) Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with a lowest floor elevation below the base flood elevation and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.

Section 5.1 GENERAL STANDARDS

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

5.1-1 ANCHORING

(1) All new construction and substantial improvements shall be anchored to prevent floatation, collapse or lateral movement of the structure.

5.1-2 CONSTRUCTION MATERIALS AND METHODS

(1) All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.

(2) All new construction or substantial improvements shall be constructed by methods and practices that minimize flood damage.

5.1-3 Utilities

(1) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system;

(2) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters; and,

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

5.1-4 SUBDIVISION PROPOSALS

(1) All subdivision proposals shall be consistent with the need to minimize flood damage.

(2) All subdivision proposals shall have public utilities and facilities such as sewer, gas electrical and water systems located and constructed to minimize flood damage.

(3) All subdivision proposals shall have adequate drainage provided to reduce exposure to flood damage.

(4) Base flood elevation data shall be provided for subdivision proposals and other proposed development which is greater than the lesser of 50 lots or 5 acres.

5.2 SPECIFIC STANDARDS

In all areas of special flood hazard where base flood elevation data has been provided as set forth in Section 3.2 BASIS FOR ESTABLISHING THE AREAS OF SPECIAL FLOOD HAZARD or section 4.3-2 USE OF OTHER BASE FLOOD DATA, the following provisions are required:

5.2-1 RESIDENTIAL CONSTRUCTION

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

5.2-2 NONRESIDENTIAL CONSTRUCTION

New construction or substantial improvement of any commercial, industrial or other nonresidential structure shall either have the lowest floor, including basement, elevated to the level of base flood elevation or, together with attendant utility and sanitary facilities, be floodproofed so that below the base floor level the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. A registered professional engineer or architect shall certify that the standards of this subsection are satisfied. Such

certification shall be provided to the official as set forth in Section 4.3-3(2).

5.3 COASTAL HIGH HAZARD AREAS

Coastal high hazard areas (V Zones) are located within the areas of special flood hazard established in Section 3.2. These areas have special flood hazards associated with high velocity waters from tidal surges and hurricane wave wash, therefore, the following provisions shall apply:

5.3-1 LOCATION OF STRUCTURES

All buildings or structures shall be located landward of the reach of the mean high tide.

5.3-2 CONSTRUCTION METHODS

(1) Elevation

All buildings or structures shall be elevated so that the lowest supporting member is located no lower than the base flood elevation level, which all space below the lowest supporting member open so as not to impede the flow of water, except for breakaway walls as provided for in Section 5.3-2(4).

(2) STRUCTURAL SUPPORT

(i) All buildings or structures shall be securely anchored on pilings or columns.

(ii) Pilings or columns used as structural support shall be designed and anchored so as to withstand all applied loads of the base flood flow.

(iii) There shall be no fill used for structural support.

(3) CERTIFICATION

Compliance with the provisions of Section 5.3-2(1) and 5.3-2(2) (i) & (ii) shall be certified to by a registered professional engineer or architect.

(4) SPACE BELOW THE LOWEST FLOOR.

(i) Any alterations, repair, reconstruction or improvements to a structure started after the enactment of this ordinance shall not enclose the space below the lowest floor unless breakaway walls are used as provided for in this section.

(ii) Breakaway walls shall be allowed below the base flood elevation provided they are not a part of the structural support of the building and are designed so as to breakaway, under abnormally high tides or wave action, without damage to the structural integrity of the building on which they are to be used.

(iii) If breakaway walls are utilized, such enclosed space shall not be used for human habitation.

(iv) Prior to construction, plans for any structure that will have breakaway walls must be submitted to the Construction Official for approval.

5.3-3 SAND DUNES

There shall be no alteration of sand dunes which would increase potential flood damage.

6.0 REPEAL OF INCONSISTENT ORDINANCES.

Any other ordinances or parts of ordinances inconsistent herewith are hereby repealed, but only to the extent of such inconsistency.

7.0 EFFECTIVE DATE

This ordinance shall become effective immediately upon its final passage and publication as provided by law.

CERTIFICATION

This is to certify that the foregoing is a true copy of Ordinance No. 158, adopted by the Board of Trustees at a regular meeting of the Board of Trustees of the Village of Loch Arbour, held on the 16th day of March, 1979.

