

CITY OF BONITA SPRINGS, FLORIDA

ORDINANCE NO. 08-17

AN ORDINANCE AMENDING AND RESTATING CITY OF BONITA SPRINGS ORDINANCE NO. 02-11, THE CITY OF BONITA SPRINGS FLOOD DAMAGE PREVENTION ORDINANCE; PROVIDING FOR STATUTORY AUTHORIZATION AND FINDINGS OF FACT; PROVIDING A STATEMENT OF PURPOSE AND OBJECTIVE; DEFINITIONS; ADMINISTRATION OF THE ORDINANCE; PROVIDING GENERAL STANDARDS FOR FLOOD HAZARD REDUCTION; PROVIDING FOR STANDARDS FOR AREAS IN THE B, C, AND X ZONES; PROVIDING FOR SEVERABILITY, REPEALER; CONFLICTS OF LAW, AND INCLUSION IN CODE, CODIFICATION AND SCRIVENER'S ERRORS AND AN EFFECTIVE DATE.

WHEREAS, on January 17, 2001 and July 17, 2002, the City of Bonita Springs adopted its Flood Damage Prevention Ordinance; and

WHEREAS, on May 28, 2008, US Department of Homeland Security / FEMA advised the City of Bonita Springs that the Flood Insurance Study (FIS) and Flood Insurance Rate Map (FIRM) will become effective on August 28, 2008; and

WHEREAS, Bonita Springs City Council recognizes the need to amend its Flood Damage Prevention Ordinance so as to ensure compliant floodplain management measures to provide protection for the residents of the City of Bonita Springs and ensure participation in the National Flood Insurance Program (NFIP); and

WHEREAS, Florida Statutes §166.01, the Municipal Home Rule Powers Act, authorizes cities to establish, co-ordinate and enforce laws that are necessary for the protection of the public; and

WHEREAS, Bonita Springs City Charter provides the City with the authority to adopt regulations designed to promote the public health, safety, and general welfare of its citizens; and

WHEREAS, the flood hazard areas of the City of Bonita Springs subject to periodic inundation which results in loss of life and property, health and safety hazards, destruction 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; and

WHEREAS, flood losses in Bonita Springs are caused by the cumulative effect of obstructions in floodplains causing increases in flood heights and velocities, and by the occupancy in flood hazard areas by uses vulnerable to floods or hazardous to other lands which are inadequately elevated, flood-proofed, or otherwise unprotected from flood damages.

THE CITY OF BONITA SPRINGS HEREBY ORDAINS:

The City of Bonita Springs Flood Damage Prevention Ordinance is hereby amended and restated as follows, by showing strikethroughs of deleted text and by underlining new text, as indicated below:

SECTION ONE: 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 to:

- (1) Restrict or prohibit uses which are dangerous to health, safety and property due to water or erosion, or which result in damaging increases in erosion hazards, or in flood heights or velocities;
- (2) Require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;
- (3) Control the alteration of natural floodplains, stream channels and natural protective barriers that are involved in the accommodation floodwaters;
- (4) Control filling, grading, dredging and other development which may increase erosion or flood damage; and
- (5) Prevent or regulate the construction of flood barriers which will unnaturally divert floodwaters or which may increase flood hazards to other lands.

SECTION TWO: OBJECTIVES

The objectives of this ordinance are:

1. To protect human life and health;
2. To minimize expenditure 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, street and bridges located in floodplains;
6. To help maintain a stable tax base by providing for the sound use and development of flood prone areas in such a way to minimize flood blight areas; and,
7. To ensure that potential homebuyers are notified that the property is in a flood area.

SECTION THREE: 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 which 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 initial investment, may not be used for human habitation, and be designed to have minimal flood damage potential. Examples of accessory structures are detached garages, carports, storage sheds, pole barns, and hay sheds.

"Addition (to an existing building)" means any walled and roofed expansion to the perimeter or height of a building in which the addition is connected by a common load-bearing wall other than a firewall. ~~Any walled and roofed addition, which is connected by a firewall or is separated by independent perimeter load-bearing wall is new construction.~~

"Appeal" means a request for a review of the City Manager's interpretation of any provision of this ordinance for a variance.

"Area of shallow flooding" means a designated AO or AH Zone on a community'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 flows may be evident. Such floodings are characterized by ponding or sheet flow.

"Area of special flood hazard" is the land in the floodplain within a community subject to a one percent or greater chance of flooding in any given year. The area is designated on a FIRM as Zone A, AE, AH, A1-30, B, C, D or X.

"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”).

“Basement” means ~~that portion~~ any area of a building having its floor subgrade (below ground level) on all sides.

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

“Building” means ~~any~~ See the definition for structure.

“City Manager” means the chief administrative officer of the city, or his or her designee, who serves at the pleasure of the Bonita Springs City Council.

“Coastal High Hazard Area” means the area subject to high velocity waters caused by, but not limited to, hurricane wave wash. The area is designated on a FIRM as Zone VI-V30 or VE.

“Critical facility” means a facility for which even a slight chance of flooding might be too great. Critical facilities include, but are not limited to schools, nursing homes, hospitals, police, fire and emergency response installations, installations which produce, use or store hazardous materials or hazardous waste.

“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, excavating, drilling operations, or ~~permanent~~ storage of materials or equipment.

“Elevated building” means a non-basement building built to have the lowest floor elevated above the ground level by means of ~~fill~~, solid foundation perimeter walls, pilings, columns (posts and piers) or shear walls.

“Encroachment” means the advance or infringement of uses, plantings, fill, excavation, buildings, permanent structures or development into a floodplain, which may impede or alter the flow capacity of a floodplain.

“Existing Construction” Any structure for which the “start of construction” commenced before September 19, 1984, or in areas where specific technical base flood elevation data establishes the area as a special flood hazard at a later date.

“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) was completed before September 19, 1984.

“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).

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

“Flood Hazard Boundary Map” (FHBM) means an official map of a community, issued by the Federal Emergency Management Agency, where the boundaries of the areas of special flood hazard have been defined as Zone A.

“Flood Insurance Rate Map” (FIRM) means an official map of a community, on which the Federal Emergency Management Agency has delineated both the areas of special flood hazard and any risk premium zones applicable to the community.

“Flood Insurance Study” (FIS) is the official hydraulic & hydrologic report provided by the Federal Emergency Management Agency. The report contains flood profiles, as well as the Flood Insurance Rate Map and the water surface elevation of the base flood.

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

“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 Administrator” is the individual appointed to administer and enforce the floodplain management regulations.

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

“Floodway” means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot.

“Functionally dependent facility” means a facility which cannot be used for its intended purpose unless it is located or carried out in proximity to water, ~~such as~~ limited to 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.

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

“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 district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
- c. Individually listed on a state inventory of historic places in states with historic preservation programs 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 an approved state program as determined by the Secretary of the Interior, or
 2. Directly by the Secretary of the Interior in states without approved programs.

“Lowest adjacent grade” means the lowest elevation, after the completion of construction, of the ground sidewalk, patio, desk 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 nonelevation design standards of this ordinance.

“Mangrove Stand” means an assemblage of mangrove trees which is mostly low trees noted for a copious development of interlacing adventitious roots above the ground and which contain one or more of the following species: black mangrove

(*Avicennia germinans*); red mangrove (*Rhizophora mangle*); white mangrove (*Longuncular 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.

“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 the North American Vertical Datum of 1988 (NAVD88), or other datum, to which base flood elevations shown on the City flood insurance rate maps are referenced.

“National Geodetic Vertical Datum (NGVD)” as corrected in 1929 is a vertical control previously used (prior to August 28, 2008) as a reference for establishing varying elevations within the floodplain.

“North American Vertical Datum of (NAVD88)” is a the vertical control used as a reference for establishing varying elevations within the floodplain as published in 1988.

“New Construction” Any structure for which the “start of construction” commenced after September 19, 1984, and includes any subsequent improvements to such structure.

“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 September 19, 1984.

“Obstruction” includes, but is not limited to, any dam, wall, wharf, embankment, levee, dike, pile, abutment, protection, excavation, channelization, bridge, conduit, culvert, building, wire, fence, rock, gravel, refuse, fill, structure, vegetation or other material in, along, across or projecting into any watercourse which may alter, impede, retard or change the direction and/or velocity of the flow of water, or due to its location, its propensity to snare or collect debris carried by the flow of water, or its likelihood of being carried downstream.

“Recreational Vehicle” means a vehicle that is:

- a. built of 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 not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonable use.

“Repetitive loss” means related damage sustained by a structure on two separate occasions during a ten–year period for which the cost of repairs at the time of each flood event, on the average, equals or exceeds 25% of the market value of the structure before the damage occurred.

“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 includes land preparation, such as clearing, grading and filling, except for the removal of exotic vegetation, and 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 the placement of a manufactured home on a foundation. Permanent construction does not 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 a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

“Structure” means a walled and roofed building, including a 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 before damaged condition would equal or exceed fifty percent of the market value of the structure before the damage occurred.

“Substantial improvement” means any combination of reconstruction, rehabilitation, addition, or other improvements to a building, taking place over a five (5) year period, in which the cumulative cost equals or exceeds fifty (50%) percent of the market value of the value of the structure:

- (1) before the start of construction of the improvement; or
- (2) if the structure has been substantially damaged and is being restored, before the damage occurred, regardless of the actual repair work performed.

This term includes structures that have incurred repetitive loss or substantial damage, regardless of the actual repair work performed.

This term does not, however, include (1) any project for

improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official prior to the permit application for improvement and which are the minimum necessary to assure safe living conditions or (2) any alteration of a "historic structure", as defined herein, so long as the alteration does not preclude the structure's continued designation as a "historic structure".

"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 fifty (50) percent of the value of the streets, utilities and pads before the repair, reconstruction, or improvement commenced.

"Variance" is means a grant of relief from the requirements of this ordinance that ~~permits construction in a manner otherwise prohibited by this ordinance where specific enforcement would result in unnecessary hardship.~~

"Violation" means the failure of a structure or other development to be fully compliant with 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 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 NGVD of 1929 or NAVD of 1988 of floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas.

SECTION FOUR: GENERAL PROVISIONS

This ordinance shall apply to all areas of special flood hazard within the jurisdiction of the City of Bonita Springs. These areas have been designated on the flood insurance rate maps (FIRM) on file with the coordinator and the City Clerk.

A. Basis for Establishing the Areas of Special Flood Hazard

The areas of special flood hazard identified by the Federal Emergency Management Agency in its flood insurance study (FIS) for the City of Bonita Springs, dated August 28, 2008, with the ~~and~~ accompanying flood insurance rate maps (FIRM) for ~~Lee County, Florida, FEMA Panel Numbers 1251245302C; 1251240510D; 1251240505E; 1251240503E; 1251240501D; 1251240444D; 1251240463C; 1251240465C; 1251240475B; and 1251240500B~~ and other

supporting data, dated ~~September 19, 1984~~, and any subsequent revisions thereto, are hereby adopted by reference and declared to be part of this ordinance.

B. Establishment of Development Permit

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

C. 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.

D. 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.

E. 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 statutes.

F. 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 man-made or natural causes. This ordinance does not imply that land outside the areas of special flood hazard or uses permitted within such areas will be free from flooding or flood damages. This ordinance shall not create liability on the part of the City of Bonita Springs 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.

G. Penalties for Violations

Violation 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 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 60 days, or both, and in addition, shall pay all costs and expenses involved in the case. Each day such violation continues shall be considered a separate offense. Nothing shall prevent the City of Bonita Springs from taking such other lawful actions as ~~is~~ are necessary to prevent or remedy any violation.

SECTION FIVE: ADMINISTRATION

A. Designation of Local Administrator

The City Manager is hereby appointed to administer and implement the provisions of this ordinance.

B. Permit Procedures

Application for a Development Permit shall be made to the City Manager, or his designee, on forms furnished by him prior 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 location of the foregoing. Specifically, the following information is required:

(1) Application Stage.

- (a) Elevation in relation to NAVD 88 of the proposed lowest floor (including basement) of all buildings;
- (b) Elevation in relation to NAVD 88 to which any non-residential building will be flood-proofed;
- (c) Certificate from a registered professional engineer or architect that the non-residential flood-proofed building will meet the flood-proofing criteria in Section Six (B) (2);
- (d) Description of the extent to which any watercourse will be altered or relocated as a result of proposed development.

(2) Construction Stage.

Provide a flood elevation or flood-proofing certification after the lowest floor is completed, or instances where the building is subject to the regulations applicable to Coastal High Hazard Areas, after placement of the lowest horizontal structural members. Upon placement of the lowest floor, or flood-proofing by whatever construction means, or upon placement of the lowest horizontal structural member, whichever is applicable, it shall be the duty of the permit holder to submit to the City Manager or his designee a certification of the elevation of the lowest floor, flood-proofed

elevation, or the elevation of the lowest horizontal structural member, whichever is applicable, as built, in relation to NAVD 88. Said certification shall be prepared by or under the direct supervision of a registered land surveyor, professional engineer or architect, 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 City Manager or his designee shall review the floor elevation survey data submitted. Deficiencies detected by such review shall be corrected by the permit holder immediately and prior to further progressive work being permitted to proceed. 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.

C. Duties and Responsibilities of the City Manager

Duties of the City Manager or his designee shall include, but not be limited to:

- (1) Review all development permits to assure that the permit requirements of this ordinance have been satisfied;
- (2) Advise permittee that additional federal or state permits may be required, and if specific federal or state permit requirements are known, require that copies of such permits be provided and maintained on file with the development permit.
- (3) Notify adjacent communities and the State of Florida, Department of Community Affairs, Bureau of Recovery and Mitigation, State Assistance Office for the NFIP, prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency.
- (4) Assure that maintenance is provided within the altered or relocated portion of said watercourse so that the flood-carrying capacity is not diminished.
- (5) Verify and record the actual elevation (in relation to NAVD 88) of the lowest floor (including basement) of all new or substantially improved buildings, in accordance with Section Five (B)(2).
- (6) Verify and record the actual elevation (in relation to NAVD 88) to which the new or substantially improved buildings have been flood-proofed, in accordance with Section Five (B)(2).
- (7) In Coastal High Hazard Areas, certification shall be obtained from a

registered professional engineer or architect that the building is designed and securely anchored to adequately anchored pilings or columns in order to withstand velocity waters and hurricane wave wash.

- (8) In Coastal High Hazard Areas, the Building Official (local floodplain management administrator, as designated by the City Manager) shall review plans for adequacy of breakaway walls in accordance with Section Six (B)(6)(h).
- (9) When flood proofing is utilized for a particular building, the City Manager or his designee shall obtain certification from a registered professional engineer or architect, in accordance Section Six (B)(2).
- (10) Where interpretation is needed as to the exact location of boundaries of the areas of special flood hazard (for example, where there appears to be a conflict between a mapped boundary and actual field conditions) the City Manager or his designee 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 article.
- (11) When base flood elevation data or floodway data have not been provided in accordance with Section Four(A) ~~(B)~~, then the City Manager or his designee shall obtain, review and reasonably utilize any base flood elevation and floodway data available from a federal, state or other source, in order to administer the provisions of Section Six.
- (12) All records pertaining to the provisions of this ordinance shall be maintained in the office of the Lee County Building Department and shall be open for public inspection.

D. Variance Procedures

- (1) The City of Bonita Springs Board of Adjustments and Appeals (BOAA) as established by the City of Bonita Springs, shall hear and decide appeals and requests for variances from the requirements of this ordinance.
- (2) The City of Bonita Springs Board of Adjustments and Appeals (BOAA) shall hear and decide appeals when it is alleged there is an error in any requirement, decision, or determination made by the City of Bonita Springs.
- (3) A variance request to place fill or allow an encroachment within a floodway may be administratively approved upon a determination by the floodplain coordinator, in conjunction by

with the City Attorney, that the failure to grant the variance would result in an inordinate burden of an existing use of real property or a vested right to a specific use of real property as defined in Florida Statutes § 70.01, as it may be amended.

- (4) ~~Any person aggrieved by the decision of the Board of Adjustments and Appeals (BOAA) may appeal such decision within thirty (30) calendar days and not thereafter to the Circuit Court for relief, pursuant to the Florida Rules of Civil Procedure.~~ Any aggrieved person, including the City of Bonita Springs, may file a petition for writ of certiorari to the Circuit Court for relief within 30 calendar days after the decision of the City of Bonita Springs Board of Adjustments and Appeals (BOAA) or the floodplain coordinator.
- (5) Variances may be issued for the repair, rehabilitation, or improvement of historic structures (see definition) upon a determination that the proposed repair, rehabilitation, or improvement will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.
- (6) In passing upon such applications, the City of Bonita Springs Board for Land Use Hearings and Adjustments shall consider all technical evaluations, all relevant factors, all standards specified in other sections of this ordinance; and
 - (a) The danger that materials may be swept onto other lands to the injury of others;
 - (b) The danger to life and property due to flooding or erosion damage;
 - (c) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
 - (d) The importance of the services provided by the proposed facility to the community;
 - (e) The necessity of the facility to a waterfront location, in the case of a functionally dependent facility;
 - (f) The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;
 - (g) The compatibility of the proposed use with existing

and anticipated development;

- (h) The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
 - (i) The safety of access to the property in times of flood for ordinary and emergency vehicles;
 - (j) 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
 - (k) 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.
- (7) Upon consideration of the factors listed above, and the purposes of this ordinance, the City of Bonita Springs Board of Adjustments and Appeals (BOAA) or the floodplain coordinator for Land Use Hearings and Adjustments may attach such conditions to the granting of variances as it deems necessary to further the purposes of this ordinance.
- (8) Variances shall not be issued within any designated floodway, if any increase in flood levels during the base flood discharge would result.
- (9) Conditions for Variances:
- (a) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief; and in the instance of a historical building, a determination that the variance is the minimum necessary so as not to destroy the historic character and design of the building;
 - (b) Variance shall only be issued upon (i) a showing of good and sufficient cause, (ii) a determination that failure to grant the variance would result in exceptional hardship; and, (iii) a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisance, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.

- (c) Any applicant to whom a variance is granted shall be given written notice over the signature of the City Official that (i) the issuance of a variance to construct a structure below the base flood level will result in increased premium rates for flood insurance up to amounts as high as \$25 for \$100 of insurance coverage and (ii) such construction below the base flood level increases risks to life and property.
- (d) The City Manager or his designee shall maintain the records of all appeal actions and report any variances to the Federal Emergency Management Agency upon request.

SECTION SIX: **PROVISIONS FOR FLOOD HAZARD REDUCTION**

A. General Standards

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

- (1) New construction and substantial improvements shall be anchored to prevent flotation, collapse and/or lateral movement of the structure;
- (2) Manufactured homes shall be anchored to prevent flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This standard shall be in addition to and consistent with applicable state requirements for resisting wind forces;
- (3) Any new construction, including substantial improvements, shall be constructed with materials and utility equipment resistant to flood damage;
- (4) New construction and/or substantial improvements shall be constructed by methods and practices that minimize flood damage;
- (5) Electrical, heating, ventilation, plumbing, air conditioning equipment, and other services facilities shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.
- (6) New and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system;
- (7) 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;

- (8) On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during flooding;
- (9) Any alteration, repair, reconstruction or improvements to a building that is not in compliance with the provisions of this ordinance, shall be deemed "new construction" as contained in this ordinance, and shall meet the requirement for "new construction"; and,
- (10) Any alteration, repair, reconstruction or improvements to a building, which is not in compliance with the provisions of this ordinance, shall be undertaken only if said non-conformity is not furthered, extended, or replaced.
- (11) All development permit applicants must acquire and submit all necessary federal and state permits, including those required to comply with Sections 404 of the federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334 prior to the issuance of a Bonita Springs building permit.

B. Specific Standards

In all areas of special flood hazard where base flood elevation data have been provided, as set forth in Section Four (A), or Section Five (C)(11), the following provisions are required.

- (1) Residential Construction. New construction or substantial improvement of any residential structure (or manufactured home) shall have the lowest floor, including basement elevated to or above base flood elevation. Should solid foundation perimeter walls be used to elevate a structure, openings sufficient to facilitate the automatic equalization of hydrostatic flood forces on the ~~due to floodwaters on both sides of exterior walls~~ shall be provided in accordance with standards of Section Six (B)(3).
- (2) Non-Residential Construction. New construction or substantial improvement of any commercial, industrial, or non-residential structure (or manufactured home) shall have the lowest floor, including basement, elevated to or above base flood elevation. Buildings located in all A-zones may be flood-proofed in lieu of being elevated provided 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 effect 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 Five (C)(9).

(3) Elevated Buildings. New construction or 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 and designed to allow for the entry and exit of floodwaters to automatically equalize hydrostatic flood forces on exterior walls. The enclosed areas below the base flood elevation may only be used for parking of vehicles, building access, or storage and must comply with the following:

- (a) Designs for complying with this requirement must either be certified by a professional engineer or architect or meet the following minimum criteria:
 - (i) Provide a minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding;
 - (ii) The bottom of all openings shall be no higher than one foot above grade;
 - (iii) Openings may be equipped with screens, louvers, valves or other coverings or devices provided they permit the automatic flow of floodwaters in both directions;
 - (iv) Access to the enclosed area shall be the minimum necessary to allow for parking of vehicles (garage door) or limited storage of maintenance equipment used in connection with the premises (standard exterior door) or entry to the living area (stairway or elevator); and
 - (v) The interior portion of such enclosed area shall not be partitioned, temperature-controlled or finished into separate rooms.

(4) Standards for Manufactured Homes and Recreational Vehicles

- (a) All manufactured homes placed, or substantially improved, on individual lots or parcels in expansions

to existing manufactured home parks or subdivisions, or in substantially improved manufactured home parks or subdivisions, must meet all the requirements for new construction, including elevation and anchoring.

- (b) All manufactured homes placed or substantially improved in an existing manufactured home park or subdivision, must be elevated so that:
 - (i) The lowest floor of the manufactured home is elevated no lower than the required base flood elevation, or
 - (ii) The manufactured home chassis is supported by reinforced piers or other foundation elements of at least an equivalent strength, of no less than 36 inches in height above grade.
 - (iii) The manufactured home must be securely anchored to the adequately anchored foundation system to resist flotation, collapse and lateral movement.
 - (iv) In an existing manufactured home park or subdivision on which a manufactured home has incurred “substantial damage” as the result of a flood, any manufactured home placed or substantially improved must meet the standards of Section Six (B)(4)(b)(i) and (iii) above.

- (c) All recreational vehicles placed on sites must either:
 - (i) Be on the site for fewer than 180 days,
 - (ii) Be fully licensed and ready for highway use, or
 - (iii) The recreational vehicle must meet all the requirements for new construction, including anchoring and elevation requirements of Section Six (B)(4)(a) or (b)(i) and (iii) above.

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 structures.

- (5) Floodways. Located within areas of special flood hazard established in Section Four (A) ~~(B)~~, are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of floodwaters which carry debris, potential projectiles, and has erosion potential, the following provisions shall apply:
- (a) Prohibit encroachments, including fill, new construction, substantial improvements and other developments unless certification (with supporting technical data) by a registered professional engineer is provided demonstrating that encroachments shall not result in any increase in flood levels during occurrence of the base flood discharge;
 - (b) If Section Six (B)(5)(a) is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of Section Six.
 - (c) Prohibit the placement of manufactured homes (mobile homes), except in an existing manufactured homes (mobile homes) park or subdivision. A replacement manufactured home may be placed on a lot in an existing manufactured home park or subdivision provided the anchoring standards of Section Six (A)(2), and the elevation standards of Section Six (B)(1) and the encroachment standards of Section Six (B)(5)(a), are met.
- (6) Coastal High Hazard Areas (V Zones). Located within the areas of special flood hazard established in Section Four (A), are areas designated as Coastal High Hazard areas. These areas have special flood hazards associated with wave wash, therefore, the following provisions shall apply, in addition to the other conditions found in Section Six:
- (a) All new construction shall be located landward of the reach of the mean high tide;
 - (b) All buildings shall be elevated so that the elevation of the bottom of the lowest horizontal structural member (excluding pilings or columns) is located at or above the base flood elevation level, with all space below the horizontal structural member open so as not to impede the flow of water. Open lattice work, decorative screening or breakaway walls may be permitted for aesthetic purposes only and must be designed to breakaway in the event of abnormal wave action and in accordance with Section Six (6)(h);

- (c) All buildings or structures shall be securely anchored on pilings or columns;
- (d) All pile and column foundations and structures attached thereto shall be anchored to resist flotation, collapse, and lateral movement due to the effect of wind and hydrodynamic water loads acting simultaneously on all building components during the base flood conditions;
- (e) A registered professional engineer or architect shall certify that the design, specifications and plans for construction are in compliance with the provisions contained in Section Six;
- (f) There shall be no fill used as structural support. Non-compacted fill may be used around the perimeter of a building for landscaping/aesthetic purposes provided the fill will wash out from storm surge, (thereby rendering the building free of obstruction) prior to generating excessive loading forces, ramping effects, or wave deflection. The City Manager or his designee shall approve design plans for landscaping/aesthetic fill only after the applicant has provided an analysis by an engineer, architect, and/or soil scientist, which demonstrates that the following factors have been fully considered:
 - (i) Particle composition of fill material does not have a tendency for excessive natural compaction;
 - (ii) Volume and distribution of fill will not cause wave deflection to adjacent properties; and
 - (iii) Slope of fill will not cause wave run-up or ramping.
- (g) There shall be no alteration of sand dunes or mangrove stands that would increase potential flood damage;
- (h) Non-supporting breakaway walls, open wood lattice-work, or insect screening intended to collapse under wind and water loads without causing collapse, displacement, or other structural damage to the elevated portion of the building or supporting foundation system. For the purposes of this section, a breakaway wall shall have a design safe loading resistance of not less than 10 and no more than 20 pounds per square foot. Use of breakaway walls which exceed a design safe loading resistance of 20 pounds per square foot (either by design or when so required by local or State codes) may be permitted only if a registered professional engineer or architect certifies that the designs proposed meet the following conditions:

(i) Breakaway wall collapse shall result from a water load less than that which would occur during the base flood; and
(ii) The elevated portion of the building and supporting foundation system shall not be subject to collapse, displacement, or other structural damage due to the effects of wind and water loads acting simultaneously on all building components (structural and non-structural). Water loading values used shall be those associated with the base flood. Wind loading values used shall be those required by applicable State or local building standards.

(iii) Such enclosed space shall be useable solely for parking of vehicles, building access, or storage.

- (i) If aesthetic open-wood lattice work or screening is utilized, such enclosed space shall not be designed to be used for human habitation, but shall be designed to be used only for parking of vehicles, building access, or limited storage of maintenance equipment used in connection with the premises;
- (j) Prior to construction, plans for any building that will have lattice work, decorative screening or breakaway walls must be submitted to the City Manager or his designee for approval;
- (k) Any alteration, repair, reconstruction or improvement to a structure shall not enclose the space below the lowest floor except with lattice work, decorative screening or breakaway walls, as provided for in Section Six (6)(h) and (i); and
- (l) Prohibit the placement of manufactured homes (mobile homes), except in an existing manufactured homes (mobile homes) park or subdivision. A replacement manufactured home may be placed on a lot in an existing manufactured home park or subdivision provided the anchoring standards of Section Six (B)(6) (d) and the elevation standards of Section Six (B)(6)(b) are met.

C. Standards for Streams with Established Base Flood Elevation - but no Floodways Designated

Located within the areas of special flood hazard established in Section Four (A), where riverine base flood data has been provided without floodways, the following provisions apply:

- (1) No encroachments, including fill material or structures shall be located within areas of special flood hazard, unless certification by a registered professional engineer is provided

demonstrating that the cumulative effect of the proposed development, when combined with all other existing and anticipated development will not increase the water surface elevation of the base flood more than one foot at any point within the community. The engineering certification should be supported by technical data that conforms to standard hydraulic engineering principles.

(3) New construction or substantial improvements of buildings shall be elevated or flood-proofed to elevations established in accordance with Section Five (C)(11).

D. Standards for Streams Without Established Base Flood Elevations and no Floodways Designated

Located within the areas of special flood hazard established in Section Four (A), where riverine base flood data has not been provided and no regulatory floodways or coastal high hazard areas have been designated, the following provisions apply:

- (1) Permits are required for all proposed construction and other developments including the placement of manufactured homes;
- (2) Standards in Section Six (A) of this ordinance must be met;
- (3) All new subdivision proposals and other proposed developments (including proposals for manufactured home parks and subdivisions) greater than 50 lots or 5 acres, whichever is the lesser, include within such proposals base flood elevation data;
- (4) Obtain, review and reasonably utilize any base flood elevation and floodway data available from a Federal, State, or other source, including data developed pursuant to Section Five (C)(11), as criteria for requiring that new construction, substantial improvements, or other development meet the standards in Section Six (A) and (B) of this ordinance;
- (5) Where base flood elevation data are utilized:
 - (i) Obtain the elevation (in relation to mean sea level) of the lowest floor (including basement) of all new and substantially improved structures, and
 - (ii) Obtain, if the structure has been flood proofed in accordance with Section Six (B) this ordinance, the elevation (in relation to mean sea level) to which the structure was flood proofed, and
 - (iii) Maintain a record of all such information with the official designated by the City Manager;
- (6) Notify, in riverine situations, adjacent communities and the State Coordinating Office prior to any alteration or relocation of a watercourse, and submit copies of such notifications to the Administrator;
- (7) Assure that the flood carrying capacity within the altered or relocated portion of any watercourse is maintained;

(8) All manufactured homes shall be installed using methods and practices that minimize flood damage. For the purposes of this requirement, manufactured homes must be elevated and anchored to resist flotation, collapse, or lateral movement. Methods of anchoring may include, but are not to be limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable State and local anchoring requirements for resisting wind forces.

E. Standards for 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 hazards; and,
- (4) Base flood elevation data shall be provided for subdivision proposals and other proposed development (including manufactured home parks and subdivisions) which is greater than fifty lots or five acres, whichever is the lesser.

D. Standards for 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 hazards; and,
- (4) Base flood elevation data shall be provided for subdivision proposals and other proposed development (including manufactured home parks and subdivisions) which is greater than fifty lots or five acres, whichever is the lesser.

E. Standards for Areas of Shallow Flooding (AH Zones)

Located within the areas of special flood hazard established in Section Four (A), are areas designated as shallow flooding areas. Shallow flooding

areas have special flood hazards associated with base flood elevations where a clearly defined channel does not exist and where the path of flooding is unpredictable and indeterminate. In these areas of special flood hazards, the provisions of Section Six (A) and (B) (1-4), and (D) shall apply.

SECTION SEVEN: STANDARDS FOR AREAS IN THE B, C, AND X ZONES

All new buildings not located in the areas of special flood hazard established in this ordinance must have the lowest floor elevation (including basement) constructed at least twelve inches above the crown of the nearest local street unless the building official determines that there are extenuating circumstances that would preclude that elevation.

SECTION EIGHT: SEVERABILITY

The provisions of this ordinance are severable, and it is the intention to confer the whole or any part of the powers herein provided for. If any Court of competent jurisdiction shall hold any of the provisions of this Ordinance unconstitutional, the decision of such Court shall not affect or impair any remaining provisions of this ordinance. It is hereby declared to be the legislative intent that this ordinance would be adopted had such unconstitutional provision not been included therein.

SECTION NINE: REPEALER

Upon the effective date of this Ordinance, Sections 6-401 through 6-4075 of the Bonita Springs Land Development Code and Bonita Springs Ordinance No. 01-02 are hereby repealed and replaced by the provisions of this Ordinance.

SECTION TEN: CONFLICTS OF LAW

Whenever the requirements or provisions of this ordinance are in conflict with the requirements or provisions of any other lawfully adopted City of Bonita Springs ordinance or Florida Statutes, the more restrictive shall apply.

SECTION ELEVEN: CODIFICATION, INCLUSION IN CODE AND SCRIVENER'S ERRORS

It is the intention of the City Council for the City of Bonita Springs that the provisions of this ordinance shall become and be made a part of the Bonita Springs City Code; and that sections of this ordinance may be renumbered or re-lettered and that the word "ordinance" may be changed to "section", "article", or such other appropriate word or phrase in order to accomplish such intention; and regardless of whether such inclusion in the code is accomplished, sections of this ordinance may be renumbered or re-lettered and typographical errors which do not affect the intent may be authorized by the City Manager, or the City Manager's designee, without need of public hearing, by filing a corrected or re-codified copy of same with the City Clerk.

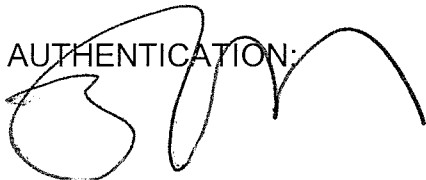
SECTION TWELVE:

EFFECTIVE DATE

The effective date of this ordinance shall be thirty (30) days from its adoption date.

DULY PASSED AND ENACTED by the City Council of the City of Bonita Springs, Florida this 3rd day of September, 2008.

AUTHENTICATION:



MAYOR



CITY CLERK

APPROVED AS TO FORM:



CITY ATTORNEY

Vote:

Nelson	Aye	Spear	Aye
Ferreira	Aye	Simons	Aye
Martin	Aye	Lonkart	Aye
McCourt	Aye		

Date filed with City Clerk: 9-4-08