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Title: Town of Penfield Environmental
Protection Overlay District
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Abstract

This ordinance is an alternative method of protection that provides for review and regulation of development in floodplains through an overlay district that specifies uses and activities which are strictly prohibited or permitted upon compliance with additional regulations. If the use or activity is regulated, a permit must be obtained and mitigation is often a condition when the use or activity will have an adverse impact on the floodplains and where no reasonably feasible alternative exists.

Resource

ENVIRONMENTAL PROTECTION OVERLAY DISTRICTS

(Town of Penfield, N.Y. §§ 3-6 to 3-10)

§ 3-6 Purpose

The purpose of the environmental protection overlay districts established in this article is to provide special controls over land development located in sensitive environmental areas within the [municipality]. These districts and their associated regulations are designed to preserve and protect unique environmental features within the [municipality] as much as possible, including but not limited to wetlands, steep slopes, floodplains, watercourses, and woodlands.

The regulations contained in each Environmental Protection Overlay District (“EPOD”) are not intended to be substituted for other general zoning district provisions but can be superimposed over such district provisions and should be considered as additional requirements to be met by the applicant or developer prior to project approval. The purpose of the overlay districts is to provide the [municipality] with an additional level of review and regulation that controls how land development permitted by the

[municipality's] primary zoning districts should occur in sensitive or unique environmental areas.

§ 3-7 Establishment of District

In order to address the specific goals listed in Section 3-6 of the ordinance, the [municipality] has established the following environmental protection overlay districts:

EPOD (1) - Wetland Protection District

EPOD (2) - Steep Slope Protection District

EPOD (3) - Woodland Protection District

EPOD (4) - Floodplain Protection District

EPOD (5) - Watercourse Protection District

§ 3-8 Official Maps

The locations and boundaries of all environmental protection overlay districts shall be delineated on an official set of maps on file in the [Municipality] Clerk's Office. These maps shall be known and may be cited as the "Official Town of Penfield EPOD maps" and shall include the environmental atlas maps for the [municipality], (prepared by the Monroe County Environmental Management Council – "MCEMC"), the official wetland maps for the [municipality], (prepared by the New York State Department of Environmental Conservation ("NYSDEC")), and the official Flood Insurance Rate Maps ("FIRM") for the [municipality], prepared by the Federal Emergency Management Agency ("FEMA"). The Official [Municipality] EPOD Maps shall be used for reference purposes only and shall not be used to delineate specific or exact boundaries of the various overlay districts. Field investigations and/or other environmental analyses may be required in order to determine whether or not a particular piece of property is included within one or more of the overlay districts.

§ 3-9 Interpretation of District Boundaries

The authorized official shall be responsible for interpreting environmental protection overlay district boundaries based on an interpretation of the "Official [Municipality] EPOD maps" determining such district boundaries. The authorized official may request the assistance of the [Municipality] Engineer/County Engineer or other appropriate department or agency in making such a determination.

Where environmental protection districts overlay any primary zoning district delineated on the Official Zoning Map of the [municipality], the requirements of the overlay district shall be met in addition to any requirements specified for development in the respective primary zoning district.

§ 3-10 Permit Application Procedures

A. EPOD Development Permit

An EPOD development permit shall be required prior to the commencement of any regulated activity or the issuance of any building permit for regulated development in a designated environmental protection overlay district within the [municipality].

The following activities are exempt from the permit procedures of the article, subject to a determination by the authorized official that such activities involve necessary normal maintenance and upkeep of property and/or area clearly incidental to the prime use on the property and/or involve public health, safety, or emergency situations:

1. Lawn care and maintenance.
2. Gardening activities.
3. Tree and shrub care and maintenance.
4. Removal of dead or deteriorating vegetation.
5. Removal of structures.
6. Select cutting and removal of trees in woodlots that are not located within a steep slope district, for personal use of the property owner. Sale of said wood is prohibited.
7. Repair and maintenance of structures.
8. Repair and maintenance of faulty or deteriorating sewage facilities or utility lines.
9. Reconstruction of structures damaged by a natural disaster.\
10. Customary agricultural activities, except structural activities.
11. Public health activities – orders and regulations of the New York State Department of Health, Monroe County Department of Health, or other agency – undertaken in compliance with the New York State Environmental Conservation Law.
12. Activities subject to the review jurisdiction of the New York State Public Service Commission or the New York State Board on Electric Generation Siting and the Environment, under the provisions of Article 7 of the New York Public Service Law.

13. Any actual or ongoing emergency activity which is immediately necessary for the protection and preservation of life, property, or natural resource values.

B. Application for Permit.

Applications for EPOD development permits shall be made in writing to the appropriate board or authorized official having jurisdiction in the matter, on forms available in the [Municipal] Planning/Physical Services Department. Such an application shall be made by the property owner or his/her agent and shall be accompanied by any materials or information deemed appropriate by the planning board or authorized official or [Municipal] Engineer/Consulting Engineer, including but not limited to a scaled (1" = 50' or 1" = 100') site plan prepared and certified by a licensed engineer or land surveyor that contains the following minimum information:

1. A location plan and boundary line survey of the property.
2. The location of all environmental protection overlay district boundaries, designated [municipal] open space, and [municipal] county or state parkland.
3. The location of all existing and proposed buildings, structures, utility lines, sewers, water and storm drains on the property or within two hundred (200) feet of the proposed work site.
4. The location of all existing and proposed impervious surfaces such as driveways, sidewalks, etc., on the property or within two hundred (200) feet of the proposed work site.
5. Existing and proposed contour levels at one (1) foot intervals for the property, unless such property is located within a steep slope protection district whereby contour levels may be shown at two (2) foot intervals.
6. The location and types of all existing and proposed vegetation and shrub masses, as well as all trees with a diameter of six (6) inches or more within and/or adjacent to the property.
7. The location of all existing and proposed drainage patterns, drainageways, swales, etc. within and/or adjacent to the property.

Each application for an EPOD development permit shall be accompanied by the appropriate fee(s) as determined by the [Municipality] Board. This/those fee(s) shall be in addition to any other fees required for the development under the [Municipality] Zoning Ordinance and/or Municipal Code.

C. Permit Review.

For projects requiring Site Plan Approval under Article IX of the ordinance, the authorized official shall refer a completed permit application to the [Municipal] Planning Board for a public hearing in accordance with Article IX (Site Plan Approval) of the ordinance. The authorized official may refer all applications to the appropriate boards and agencies for their review and recommendations. Such boards or agencies shall have thirty (30) days from the date of its receipt of a completed application in which to review such application and report its recommendations to the Planning Board or authorized official. Should such boards and agencies fail to report or make a recommendation to the authorized official or the Planning Board regarding applications within the thirty (30) day time period, or request an extension, the authorized official or the Planning Board may take action on the permit application without such report.

The authorized official or the [Municipal] Planning Board shall have the authority to grant or deny an EPOD development permit, subject to the standards, criteria, other regulations contained in this ordinance, regulations contained in the Penfield Waterfront Consistency Review Law (Local Law No. 1 of 1991), Penfield Environmental Quality Review Law (PEQR) and State Environmental Quality Review Act (SEQRA). The authorized official or the [Municipal] Planning Board may also request a report from the [Municipal] Engineer/Consulting Engineer in acting on such permit applications.

Any development permit issued by the authorized official or the [Municipal] Planning Board in accordance with the provisions of this article may be issued with conditions. Such conditions may be attached as are deemed necessary to ensure the preservation and protection of environmentally sensitive areas and to ensure compliance with the policies and provisions of this article. Every permit issued pursuant to this article shall contain the following conditions:

1. The authorized official, [Municipal] Engineer/Consulting Engineer, and/or other appropriate [Municipal] official shall have the right to inspect the project from time to time.
2. The permit shall expire on a particular date.
3. The permit holder shall notify the authorized official or other appropriate [municipal] official of the date on which project construction is to begin, at least five (5) days in advance of such date of construction.

D. Requirement for Letter of Credit/Certified Check

Following approval of an application for an RAFD development permit, and prior to the issuance of any building permit or other [municipality] permit, the applicant shall furnish the [municipality] with an Irrevocable Letter of Credit or certified check in an

amount to be reviewed and approved in writing by the [Municipality] Engineer/Consulting Engineer and sufficient to cover the costs of compliance, contingencies, and inspection of the various specifications and conditions of the development permit. The purpose of the Letter of Credit or certified check shall be to ensure that all items, activities, or structures specified in the plans approved by the authorized official or the [Municipality] Planning Board are constructed or carried out in accordance with the Development Standards set forth in subsection and with other such plans and specifications and requirements of the [municipality].

The Irrevocable Letter of Credit or certified check shall continue in full force and effect until such time as the authorized official has certified that based on a site inspection, all specifications, requirements and permit conditions have been completed and/or complied with, whereupon the Letter of Credit or certified check shall be released to the applicant. The authorized official upon recommendation of the [Municipality] Engineer/Consulting Engineer, or other appropriate department or authorized official, may deduct or withhold an amount from the Letter of Credit or certified check sufficient to cover the cost of noncompliance with any requirements, specification or permit condition, and/or release the [municipality] from any liability resulting from such noncompliance.

E. Suspension or Revocation of Permits

The authorized official may suspend a permit (temporarily) until such time as the board having jurisdiction reviews the suspension. The [Municipal] Board may, upon recommendation of the authorized official, and after having provided the permittee five (5) days written notice, suspend or revoke a development permit issued in accordance with the provisions of this section where it has found evidence that the applicant has not complied with any/all terms or conditions of such permit, has exceeded the authority granted in the permit, or has failed to undertake the project in the manner set forth in writing with its findings and reasons for revoking or suspending a permit issued pursuant to this section. The authorized official shall forward a copy of said findings to the applicant. Permitted work shall immediately cease upon suspension of a permit.

EPOD (4) - Floodplain Protection District.

Town of Penfield § 3-14

[HISTORY AND BACKGROUND: This section was adopted 2/12/81 and effective 3/2/81.

Amended 9/8/87; effective 9/19/87.]

A. Purpose.

It is hereby found and declared that the unmanaged use of property, the alteration of topography, and excessive filling, channel encroachment or other acts affect the natural discharge of water through floodplains and constitute a threat to the health,

safety and general welfare of the inhabitants of the [municipality] and to the economic vitality of the community. The purpose of this section is to regulate development within the areas of the [municipality] which are subject to flooding in order to protect the health, safety, and welfare of the inhabitants of the [municipality] from hazards due to periodic flooding; to prevent loss of property and potential loss of life in the flood-prone areas; to preserve the water quality; to minimize expenditures for relief, insurance, and flood control projects; and to limit building and development within the areas of special flood hazard.

The boundaries of the Floodplain Protection District shall be delineated on the "Official [Municipality] EPOD Maps", with latest revisions, and shall include all Areas of Special Flood Hazard as defined by Article II-2 of the Code of Penfield and as further identified by the Federal Insurance Administration by a report entitled "The Flood Insurance Study for the Town of Penfield, New York" dated August 18, 1980 with accompanying Flood Insurance Rate Map and Flood Hazard Boundary Map. Such maps and amendments and revisions thereto, are incorporated by reference herewith and declared to be a part of this article.

B. Floodplain Protection District - I ("FPO - I")

1. Delineation of FPO - I Floodway. There is hereby established an FPO - I zone to accomplish the purposes of this section. The boundaries of this zone include all areas within the floodways as delineated in the Flood Insurance Study for the [municipality].
2. Prohibited Activities. The following activities are not permitted in the FPO - I zone:
 - a. New structures (temporary or permanent); any addition or substantial improvement to existing structures; filling of land; excavation; deposits, obstructions, or outside storage of materials or equipment.
 - b. The temporary or permanent placement of a mobile home, manufactured home, or similar structure.
 - c. The construction or operation of an on-site sewage disposal system.
 - d. Any other activity which, as demonstrated through a technical evaluation, will result in any increase in flood levels during the occurrence of the base flood discharge.

C. Floodplain Protection District II - ("FPO - II")

1. Delineation of FPO - II. There is hereby established a FPO - II zone to accomplish the purposes of this ordinance. The boundaries of this zone include areas within the ten (10) year floodplain but do not include any portion of the Floodplain Overlay District I (FPO - I).

2. Prohibited Activities. The following activities are not permitted in the FPO - II zone:
 - a. New structures (temporary or permanent); filling of land; excavation; deposits, obstructions, or outside storage of materials or equipment.
 - b. The temporary or permanent placement of a mobile home, manufactured home, or similar structure.
 - c. The construction or operation of an on-site sewage disposal system.
 - d. Any activity which is not in compliance with the standards and requirements set forth in other sections of this ordinance.
3. Regulated Activities. The following activities shall not be allowed in whole or in part in an FPO - II zone without first requesting and receiving a permit from the Planning Board as outlined in Section 3-14 of this article:
 - a. Addition or substantial improvements to structures.
 - b. Subdivision of land.
 - c. 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.

D. Floodplain Protection District III - ("FPO - III").

1. Delineation of FPO - III. There is hereby established an FPO - III zone to accomplish the purposes of this ordinance. The boundaries of this zone include all areas within the one hundred (100) year floodplain as delineated in the Flood Insurance Study but does not include any portion of Floodplain Overlay District I and II. (FPO - I and FPO - II).
2. Prohibited Activities. The following activities are not permitted in the FPO - III zone:
 - a. The temporary or permanent placement of mobile home, manufactured home, or similar structure.
 - b. The construction or operation of an on-site sewage disposal system.
 - c. Any activity which is not in compliance with the standards and requirements set forth in other sections of this ordinance.

3. Regulated Activities. The following activities shall not be allowed in whole or in part within an FPO - III zone without first requesting and receiving a permit from the Planning Board as outlined in Section 3-14-F of this article:
 - a. Additions or substantial improvements to structures.
 - b. New structures.
 - c. Outside storage of materials and equipment.
 - d. Subdivision of land.
 - e. 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.
4. The areas of special flood hazard identified by the Federal Emergency Management Agency in a scientific and engineering report entitled "The Flood Insurance Study for the Town of Penfield, of Monroe County, New York", dated August 18, 1980, with accompanying Flood Insurance Rate Maps and Flood Boundary-Floodway Maps is hereby adopted and declared to be part of this ordinance. The Flood Insurance Study and maps and amendments and revisions thereto, area on file at the Department of Planning, Zoning & Physical Services.

E. Permit Conditions.

When reviewing an application for an EPOD development permit for a regulated action in any Floodplain Overlay District, the [Municipal] Planning Board or the authorized official shall consider all technical information available, all relevant factors and standards specified in the section, and shall determine:

1. That the requirements of this ordinance have been satisfied; or
2. That the proposed development does or does not adversely affect the area of special flood hazard (for the purposes of this ordinance "adversely affect" means physical damage to adjacent properties). An engineering study may be required of the applicant for this purpose.
 - a) If there is no adverse affect, then the permit shall be granted consistent with the provisions of this ordinance.
 - b) If there is an adverse affect then flood damage mitigation shall be made a condition of the permit.

- c) All development shall be reviewed for compliance with Section 3-14-H, "Encroachments", of this ordinance.

F. Development Standards/Permit Conditions.

General Standards. No permit shall be granted for a regulated activity within any of the Floodplain Protection Districts unless the applicant submits a plan certified by a registered professional engineer, which plan shall contain the following evidence that:

1. The structure will be constructed with its lowest floor elevated to at least one (1) foot above the base flood level.
2. The structure will not affect the efficiency or the capacity of the floodway, or increased flood heights.
3. The structure will be placed on the site so as not to cause increased velocities or obstruct or otherwise catch or collect debris which will obstruct flow under flood conditions.
4. The structure shall be firmly anchored to prevent flotation, collapse or lateral movement which may result in damage to other structures, restrictions of bridge openings and other narrowings of the watercourse.
5. All new and replacement water supply and sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems.
6. Service facilities, such as electrical and heating equipment, shall be constructed at or above the base flood level for the particular area or shall be flood-proofed.
7. New construction and substantial improvements shall be constructed using materials, methods, and practices that minimize flood damages.
8. Based flood elevation data shall be provided for subdivision proposals and other proposed developments.
9. Such other data or evidence as may be requested by the [Municipal] Board, Planning Board, Conservation Board, or authorized official of the [municipality] pertaining to flooding and site plan information.

G. Miscellaneous Standards.

The Planning Board may require that the applicant adequately demonstrate that one (1) or more of the following conditions be met before granting a permit for land use within any of the Floodplain Overlay Districts:

1. Anchorage to resist flotation and lateral movement.

2. Reinforcement of walls to resist water pressure.
3. Installation of watertight doors, bulkheads and shutters.
4. Use of paints, membranes, or mortars to reduce seepage of water through walls.
5. Addition of mass or weight to resist flotation.
6. Installation of pumps to lower water levels in structures.
7. Pumping facilities to relieve hydrostatic water pressure on external walls and basement floors.
8. Elimination of gravity flow drains.
9. Construction to resist rupture or collapse caused by water pressure or floating debris.
10. Compliance with other environmental regulations found in the Code of the [municipality].

H. Encroachments.

1. In all areas of special flood hazard in which base flood elevation data is available pursuant to the [Town of Penfield] Flood Insurance Study and no floodway has been determined, the cumulative effects of any proposed development, when combined with all other existing and anticipated development, shall not increase the water surface elevation of the base flood more than one (1) foot at any point.
2. In all areas of the special flood hazard where floodway data is provided or available, the requirements of Section 3-14-B, FPO-I, shall apply.
3. All proposed development in riverine situations where no flood elevation data is available (unnumbered A zones as indicated by the [Town of Penfield] Flood Insurance Study) shall be analyzed to determine the effects on the flood carrying capacity of the area of special flood hazards set forth in this ordinance. This may require the submission of additional technical data to assist in the determination.
4. When base flood elevation data has not been provided in accordance with Section III-3-14-D-4, the authorized official shall obtain, review, and reasonably utilize any base flood elevation and floodway data available from Federal, State, or other sources.

I. Additional Requirements/Information.

1. In addition to the other duties and responsibilities specified in this section, the authorized official is authorized to administer the following provisions of this ordinance.
 - a. Secure from the applicant all information necessary for a complete review of the proposed development by the appropriate boards and officials. The information necessary for submission shall be specified in Section 3-10 of this ordinance, plus any additional information that may be required by the [Municipality] Planning Board or the authorized official to adequately review a request for a permit.
 - b. Review all applications to determine that all necessary permits have been obtained from the Federal, State, or local governmental agencies from which prior approval is required.
 - c. Obtain and record the actual elevation (in relation to mean sea level) of the lowest floor (including basement or cellar) of all new or substantially improved structures, and whether or not the structure contains a basement.
 - d. For all new or substantially improved floodproofed structures, the administrator shall verify and record the actual elevation (in relation to mean sea level); and maintain the floodproofing certifications required in this section.
 - e. Maintain for public inspection all records pertaining to the provisions of this ordinance.
 - f. Notify adjacent communities and the New York State Department of Environmental Conservation prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Insurance Administration. Require that maintenance is provided within the altered or relocation portion of said watercourse such that its flood carrying capacity is not diminished.
2. Where this section imposes greater restrictions than are imposed by the provision of any law, ordinance, regulation, or private agreement, this section shall control. Where there are restrictions by any law, ordinance, regulation, or private agreement, greater than those imposed by this section, such greater restrictions shall control. All uses presently permitted in the zoning districts within the [municipality] which also fall within the FPO-I, FPO-II, and FPO-III Zones shall continue to be permitted uses for the districts, except where otherwise restricted by this section.
3. Appeals for variances to the requirements of this section shall be made to the Zoning Board of Appeals.

- a. The Zoning Board of Appeals as established by the [municipality] shall hear and decide appeals and requests for variances from the requirements of Article III, Section 3-14.
 - b. The Zoning Board of Appeals shall hear and decide appeals when it is alleged that there is an error in any requirement, decision, or determination made by the authorized official in the enforcement or administration of this ordinance.
4. In passing upon such applications, the Zoning Board of Appeals shall consider all the technical evaluations, all relevant factors, standards specified in other sections of this local law 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 of a waterfront location, where applicable;
 - e. The necessity to the facility of a waterfront location, where applicable;
 - f. The availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;
 - g. The compatibility of the proposed use with the existing and anticipated development;
 - h. The relationship of the proposed use to the comprehensive plan and floodplain management program of that area;
 - i. The safety of access to the property in times of flood for ordinary and emergency vehicles;
 - j. The costs to local governments and the dangers associated with conducting search and rescue operations during periods of flooding;
 - k. The expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site; and

- l. The costs of providing governmental services during and after flood conditions, including search and rescue operations, maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems as well as streets and bridges.
5. Upon consideration of the factors of Section III-3-14-I-4 and the purposes of this article, the Zoning Board of Appeals may attach such conditions to the granting of variances as it deems necessary to further the purposes of floodplain protection.
6. The authorized official shall maintain the records of all appeal actions, including technical information, and report any variances to the Federal Emergency Management Agency upon request.
7. Variances shall not be issued within any designated floodway if any increase in flood levels during base flood discharge would result.
8. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
9. Variances shall only be issued upon receiving written justification:
 - a. A showing of good and sufficient cause;
 - b. A determination that failure to grant the variance would result in exceptional hardship to the applicant; and
 - c. A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, or extraordinary public expense or create a nuisance, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.
10. Any applicant to whom the [municipality] has granted a variance for a building with the lowest floor below the base flood elevation shall be given written notice that the cost of flood insurance will be commensurate with the increased risk resulting from lowest floor elevation.
 - a. No board or official of the [municipality] shall approve any construction or other activity within the [municipality] not in compliance with the standards of Public Law 93-234, 93rd Congress, H.R. 8449, December 31, 1973, better known as the "Flood Disaster Protection Act of 1973", and the Floodplain Management Requirements of Section 60.3 (d) formerly 1910.3 (d) and any amendments or revisions thereto.
 - b. 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 that land outside the area of special flood hazards or uses permitted within such areas will be free from flooding or flood damage. This ordinance shall not create any liability on the part of the [municipality], any official or employee thereof, or the Federal Insurance Administration for any flood damages that result from reliance upon this ordinance or any administrative decision lawfully made hereunder.

J. Specific Standards

In all areas of special flood hazards where base flood elevation data has been provided as set forth in Section III-3-14-D-4 the following standards are required:

Residential Construction.

New construction and substantial improvements of any residential structure shall:

- a. Have the lowest floor, including basement or cellar, elevated a minimum of one (1) foot or above the base flood elevation;
- b. Have fully enclosed areas below the lowest floor that are subject to flooding designed to automatically equalize hydrostatic flood forces on exterior walls by allowing entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a licensed professional engineer or architect and meet or exceed the following minimum criteria:
 1. 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;
 2. The bottom of all such openings shall be no higher than one (1) foot above the lowest adjacent finished grade; and
 3. Openings may be equipped with louvers, valves, screens, or other coverings or devices provided they permit the automatic entry and exit of floodwaters.

4. Non-residential Construction.

New construction and substantial improvements of any commercial, industrial, or other non-residential structure, together with attendant utility and sanitary facilities, shall either: have the lowest floor, including basement or cellar, elevated to or so that the structure is watertight below the base flood level with walls substantially impermeable to the passage of water. All structure components located below the base flood level must be capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy.

- a. If the structure is to be elevated, fully enclosed areas below the based flood elevation shall be designed to automatically (without human intervention) allow for the purpose of equalizing hydrostatic flood force on exterior walls. Designs for meeting this requirement must be certified by a licensed professional engineer or a licensed architect and meet the following criteria:
 1. 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.
 2. The bottom of all such openings shall be no higher than one (1) foot above the lowest adjacent finished grade; and
 3. Openings may be equipped with louvers, valves, screens, or other coverings or devices provided they permit the automatic entry and exit of floodwaters.

b. If the structure is to be flood-proofed:

1. A licensed professional engineer or architect shall develop and/or review structural design, specifications, and plans for the construction and shall certify that the design and methods of construction are in accordance with accepted standards of practice to make the structure watertight with walls impermeable to the passage of water, with structural components having the capability of resisting hydrostatics and hydrodynamic loads and effects of buoyancy; and
2. A licensed professional engineer or licensed land surveyor shall certify the specific elevation (in relation to mean sea level) to which the structure is flood-proofed.
3. The local administrator shall maintain on record a copy of all such certificates noted in this section.

c. Construction Standards for Areas of Special Hazards Without Base Flood Elevations.

New construction or substantial improvements of structures including manufactured homes shall have the lowest floor including basement elevated to or above the base flood elevation as may be determined in Section III-3-14-D-4 or two (2) feet above the highest adjacent grade where no elevation data is available.

1. New construction or substantial improvements of structures including manufactured homes shall have the lowest floor (including basement) elevated at least two (2) feet above the highest adjacent grade next to the proposed foundation of the structure.
2. Fully enclosed areas below the lowest floor that are subject to flooding shall be designed to automatically (without human intervention) allow for the entry and exit of floodwaters for the purpose of equalizing hydrostatic flood forces on exterior walls. Designs for meeting this requirement must either be certified by a licensed professional engineer or a licensed architect to meet the following criteria:

- a. A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding;
- b. The bottom of all such openings shall be no higher than one (1) foot above the lowest adjacent finished grade; and
- c. Openings may be equipped with louvers, valves, screens, or other coverings or devices provided they permit automatic entry and exit of floodwaters.

K. Penalties for Non-Compliance.

Any structure found not compliant with the requirements of this ordinance for which the developer and/or owner has not applied for and received an approved variance under Section III-3-14-I will be declared noncompliant and notification sent to the Federal Emergency Management Agency. Further violation of this article shall be punishable as provided in Section 14-28 herein entitled "Penalties".

L. Definitions

Terms Defined

Accessory Structure or Use - A structure or use incidental and subordinate to the principal structure or use on the same lot.

Adsorption - The physical binding of a particle or a particular substance to the surface of another by adhesion or penetration. In soils it is the attachment of an ion, molecule, or compound to the charged surface of a particle where it may be subsequently replaced or exchanged.

Agriculture - All methods of production, processing, storage, and management of livestock, crops, vegetation, and soil. This includes, but is not limited to, the related activities of tillage, fertilization, pest control, harvesting, and marketing. It also includes, but is not limited to, the activities of feeding, housing, and maintaining animals such as cattle, dairy cows, sheep, goats, hogs, horses, and poultry as well as the handling of their by-products.

Angle of Repose - The steepest angle of a surface at which a mass of loose or fragmented material will remain standing in a pile on a surface, rather than sliding or crumbling away; the angle will vary according to the composition of the material. Also, the angle of rest.

Appeal - A request for a review of the local administrator's interpretation of any provision of this chapter or request for a variance.

Applicant – Any person who is an owner, contract purchaser, or legally authorized representative requesting approval of development pursuant to this local law.

Area of Special Flood Hazard – The land in the floodplain subject to a one percent (1%) or greater chance of flooding in any given year (100 year flood level).

Bankful Stage – The stage or elevation at which water overflows the natural banks of a stream or other waters of the state and begins to inundate upland area. In the absence of physical evidence, the two-year recurrent flood elevation may be used to approximate the bankful stage.

Base Flood – The flood having a one percent (1%) chance of being equaled or exceeded in any given year. (See Area of Special Flood Hazard and One Hundred Year Level).

Based Flood Elevation – Elevation reached by the 100-year flood; generally defined in relation to height above mean sea level or average depths of flow above the ground surface.

Basement – That portion of a building that is partly below grade level which has more than half of its height, measured from the floor to the ceiling, above the average finished grade of the ground adjoining the building.

Building – Any structure having a roof supported by columns or by walls and intended for the shelter, housing, or enclosure of persons or animals.

Building, Principal – The building in which is conducted the main or principal use of the lot on which said building is situated.

Cellar – A story whose floor level is more than one-half (1/2) of its story height below the average finished grade of the ground adjoining the building.

Clear-Cutting – Any cutting of all or substantially all trees over six inches in diameter at breast height (dbh).

Dentrification – Biologically breaking down nitrite or nitrate into nitrogen.

Design Flood Elevation – The elevation of the 100-year storm as defined in FEMA Flood Insurance Studies or, in areas without FEMA floodplains, the elevation of the 25-year storm, or the edge of mapped flood prone soils or similar methodologies.

Detention Basin – Structures which are built upstream from a populated area so that precipitation flows do not flood and cause the loss of life or property. They are normally dry, but are designed to detain surface water temporarily during and immediately after a runoff event. Their primary function is to attenuate the storm flows by releasing flows at a lower flow rate. There are no gates or valves allowed on the outlet so that water can never be stored on a long-term basis. Typical detention times in such a basin would be on the order of 24 to 72 hours although some are as long as 5 to 10 days.

Development – Any man-made change to improved or unimproved real estate, including, but not limited to, buildings or other structures, mining, dredging, filling, paving, excavation, or drilling operations or storage of equipment or materials.

Federal Emergency Management Agency (FEMA) – The federal agency that administers the National Flood Insurance Program.

Filling – The depositing of natural or artificial material that raises the existing grade of land or modifies the surface of water bodies.

Flash Flood – Any flood in which there is a rapid rise in water, high water velocity, and a large amount of debris. Flash floods are caused by steady rain over a long period of time or short intense thunderstorms.

Flood or Flooding – A general and temporary condition of partial or complete inundation of normally dry land areas resulting from the overflow of streams, rivers, or other inland areas of water.

Floodplain or Flood Prone Area – A land area adjoining a river, stream, watercourse, bay, or lake, which is likely to be flooded, as designated in the Flood Insurance Study.

Flood Insurance Rate Map (FIRM) – The official map on which the Federal Insurance Administration has delineated both the areas of special flood hazards and the risk premium zones applicable to the [municipality].

Flood Insurance Study – The official report entitled “Flood Insurance Study, Town of Penfield, New York, Monroe County”, in which the Federal Insurance Administration has provided flood profiles, as well as the Flood Boundary-Floodway Maps, Flood Insurance Rate Maps (FIRM), and the water surface elevation of the base flood.

Floodway – The channel of a river or other water course and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one (1) foot.

Floodproofing – Any combination of structural and non-structural additions, changes, or adjustments to properties and structures which reduces or eliminates flood damage to lands, water and sanitary facilities, structures, and contents of buildings.

Flood Level, One Hundred Year – The highest level of flood that, on the average, is likely to occur once every one hundred (100) years as determined in the U.S. Department of Housing and Urban Development Federal Insurance Administration Flood Insurance Study for the [municipality].

Flood Level, Ten Year – The highest level of flood that on the average is likely to occur once every ten (10) years as determined in the U.S. Department of Housing and Urban

Development Federal Insurance Administration Flood Insurance Study for the [municipality].

Height, Building – The vertical distance measured from grade level to the highest point on the roof.

Impervious Surface – Any material that prevents the infiltration of water into the soil; for example: roads, rooftops, sidewalks, patios, bedrock outcrops, and compacted soil.

Infiltration – That portion of rainfall or surface runoff that moves downward into the subsurface rock and soil.

Mitigation – The reduction of adverse effects of a proposed project by considering, in this order:

1. Avoiding the impact altogether by not taking a certain action or parts of an action.
2. Minimizing the impacts by limiting the degree or magnitude of the action and its implementation.
3. Rectifying the impact by repairing, rehabilitating, or restoring the effected environment.
4. Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action by monitoring and taking appropriate measures.
5. Compensating for the impact by replacing or providing comparable substitute resource areas.

Mobile Home – A detached, single family dwelling unit with any or all of the following characteristics:

- A. Manufactured as a re-locatable dwelling unit intended for year-round occupancy and for installation on a site without a basement or permanent foundation.
- B. Designed and manufactured as a type of unit which would require after January 15, 1974, a seal as provided for in the State Code for Construction and Installation of Mobile Homes; or after June 15, 1976, a seal as issued by the U.S. Department of Housing and Urban Development.
- C. Designed to be installed as a single wide or double-wide unit, with only incidental unpacking and assembling operations.

Native Vegetation – Any vegetation that is native to the region.

New Construction – Structures for which the “start of construction” commenced on or after the effective date of this ordinance.

Non-Point Source Pollution – Pollution that is generated by various land use activities rather than from an identifiable or discrete source and is conveyed to waterways through natural processes, such as rainfall, stormwater run off, or groundwater seepage rather than direct discharges.

Open Space – Area unoccupied by any building, structure, or parking area, whether paved or unpaved.

Overland Flow – The flow of rainwater or snowmelt over the land surface toward stream channels. After it enters a watercourse it becomes runoff.

Pollution – Any contamination or other alteration of the physical, chemical or biological properties of any waters of this state, including a change in temperature, taste, color, turbidity, or odor of the waters or the discharge or deposit of any organic matter, harmful organism, or liquid, gaseous, solid, radioactive, or other substance into any waters of this state that will render the waters harmful or detrimental to:

1. public health, safety or welfare;
2. domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses;
3. livestock, wild animals, birds, or
4. fish or other aquatic life

Riparian – Those areas associated with streams, lakes, and wetlands where vegetation communities are predominantly influenced by their association with water.

Roof – A horizontal or inclined structural element of a building which serves as the top closure.

Roof Line – An imaginary line running in a horizontal direction around a building; said line is created at the vertical break of a wall and roof.

Sediment – Soil particles that have been transported away from their natural location by wind or water action.

Sheet Flow – Flow that occurs overland in places where there are no defined channels (the flood water spreads out over a large area at a uniform depth). This is also referred to as overland flow.

Steep Slope – Steep slopes are those slopes that are equal to or greater than 25 %. (25% is a number chosen by the [municipality]. Others may choose less than 25% as their angle).

Story – The portion of a building which is between one flood level and the next higher floor level or the roof. If a mezzanine flood area exceeds one-third (1/3) of the area of the floor immediately below, it shall be deemed to be a story. A basement shall be deemed to be a story when its ceiling is six (6) or more feet above the finished grade.

Stream – A body of running water moving over the earth's surface in a channel or bed, such as a creek, rivulet or river. It flows at least part of the year, including perennial and intermittent streams. Streams are dynamic in nature, and their structure is maintained through build-up and loss of sediment.

Stream Order – A classification system of streams based on stream hierarchy (the smaller the stream, the lower its numerical classification). A first order stream does not have tributaries and normally originates from springs and/or seeps. At the confluence of two first order streams, a second stream begins. Similarly, a third order stream begins at the confluence of two second order streams and so on.

Stream System – A stream channel together with one or both of the following:

1. 100-year floodplain
2. hydrologically related non-tidal wetlands.

Structure – An assembly of materials forming a construction made of component structural parts for occupancy of use, excluding fences, retaining walls, or decorative gardening materials.

Substantial Improvement – Any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds 25 percent of the present assessed valuation of the structure either:

- A. Before the improvement or repair is started, or
- B. If the structure has been damaged and is being restored before the damage occurred.

For the purpose 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:

- A. 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
- B. Any alterations of a structure listed on the National Register of Historic Places or a State Inventory of Historic Places.

Surface Runoff – That portion of rainfall that moves over the ground toward a lower elevation and does not infiltrate the soil.

Variance – This is a form of administrative relief that allows property to be used in a way that does not comply with the literal requirements of the zoning ordinance. There are two basic types of variances: use variances and area variances.

Watercourse – Any natural or artificial, intermittent, seasonal or permanent, and public or private water body or watercourse. A water body is intermittently, seasonally, or permanently inundated with water and contains a discernible shoreline and includes ponds, lakes and reservoirs. A watercourse includes rivulets, brooks, creeks, streams, rivers, and other waterways flowing in a definite channel with a bed and banks and usually in a particular direction.

Wetland – Those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support (and that under normal circumstances do support) a prevalence of vegetation typically adapted for life in saturated soil conditions, commonly known as hydrophytic vegetation.

Any area which meets one or more of the following criteria:

1. Land and waters of the State that meet the definition provided in subdivision 24-0107.1 of the New York Freshwater Wetlands Act (Article 24 and Title 23 of Article 71 of the Environmental Conservation Law) and have an area of at least 12.4 acres or, if smaller, have an unusual local importance as determined by the commissioner pursuant to subdivision 24-0301.1 of the Act. The approximate boundaries of such lands and waters are indicated on the official freshwater wetlands map promulgated by the commissioner pursuant to the subdivision 24-0301.5 of the Act, or such a map as has been amended or adjusted pursuant to section 24-0301.6 of the Act.
2. All other areas that are inundated or saturated by surface or groundwater at a frequency and duration to support (and that under normal circumstances do support) a prevalence of hydrophytic vegetation as defined by the Federal Manual for Identifying and Delineating Jurisdictional Wetlands (January 1989) prepared by the Federal Interagency Committee of the U.S. Army Corps of Engineers, U.S. Environmental Protection Agency, U.S. Fish and Wildlife Service, and the U.S.D.A. Natural Resource Conservation Service.