

**14-1 REMOVAL OF EACH AND TOPSOIL.**

No earth, rock, gravel or topsoil shall be removed from any lands in any zone, except in the Quarry Zone, without the permission of the Board of Adjustment and the Governing Body, and the sale of earth, rock, gravel or topsoil and the removal thereof shall be deemed the practice of an industrial or quarry use, provided, however, that earth, rock, gravel and topsoil may be moved by the owner or occupant of lands to another part of the same lands owned or occupied by him, and provided further, that the owner or developer of a subdivision or development, the map of which has been approved by the Planning Board and Governing Body, shall not be prohibited by Section 14-1 from removing any earth, rock, gravel and topsoil from the right-of-way of a street or road shown on such map in the course of the construction or building of such street or road, and provided further, that in the construction of any building or structure, the owner or builder thereof shall not be prohibited by this Section from removing earth, rock, gravel and topsoil coming from the excavations made for such building or structure and which earth, rock, gravel and topsoil the Construction Official deems surplus materials and not necessary for such building or structure or for the lands whereon erected. (Ord. No. 581 § 13-1)

**14-2 TREATMENT OF ENVIRONMENTAL CONSTRAINTS.**

Land use on an existing lot or lots, for new structures or extensions, improvements, or modifications to existing structures, or on lots created by subdivision, or on lots requiring Site Plan Approval shall provide for environmental constraints as follows:

**14-2.1** Stormwater management and control shall be provided in accordance with Section 12-29 of the Borough Land Development Regulations.

**14-2.2** Roof drains on all buildings shall be connected to suitable dry-wells, or existing storm sewer systems.

**14-2.3** Soil erosion prevention shall be observed in accordance with the standards of the Soil Conservation Service, U.S. Department of Agriculture.

**14-2.4** Provisions shall be made to assure no increase in runoff from an entire tract as a result of development.

**14-2.5** On slopes exceeding fifteen (15%) percent, precautions shall be taken to prevent an increase in runoff from the slope area; specifically, the following disturbances of the slope ground are not allowed without prior approval of the appropriate authority:

- Removal of trees or natural vegetation;
- Removal of topsoil;
- Dumping or depositing of earth fill or other materials;
- Preparation for construction of any structure;
- In any part of a development tract, strip clearing of woodlands, beyond normal thinning, shall require Prior Approval of the Appropriate Authority.

**14-2.6** The extent of surface disturbance, regrading and/or stripping of vegetation on steep slopes on any tract of land which is the subject of an application for subdivision or site plan approval shall be limited by the following:

**Maximum Surface Disturbance per Lot Shall Not Exceed the Greater of:**

<b>Slope Category</b>	<b>Percent of Category</b>	<b>Square Feet</b>
15-24.99%	20%	1,000
25-29.99%	None	500
30% or greater	None	250

When granting subdivision or site plan approval the Planning Board (or Board of Adjustment) shall approve the extent of slope disturbance for each individual lot, as well as the entire tract, according to these standards. (Ord. No. 581 § 13-2; Ord. No. 93-970 § 13-2.6; Ord. No. 2002-1274 § 9; Ord. No. 2006-1423 § 4)

**14-3 LAND USE OF ENVIRONMENTALLY CONTROLLED AREAS.**

Environmentally controlled areas may be developed or improved subject to the following:

**14-3.1** Compliance with the applicable provisions of Section 14-2 of this Article.

**14-3.2** Submission of geological data, as defined in Article 1 of this chapter, if, in the judgment of the appropriate authority, such data is necessary to evaluate the suitability of use of the Environmentally Controlled area for the intended development. (Ord. No. 581 § 13-3)

**14-4 FLOODPLAIN AND WATERCOURSE REGULATIONS.****14-4.1 Short Title.**

This Section 14-4 of the Development Regulations Ordinance of the Borough of Bernardsville may be cited and referred to as the Floodplain and Watercourse Regulations. (Ord. No. 581 § 13-4.1)

**14-4.2 Purpose.**

Whereas, Mine Brook, the Passaic River, the North Branch of the Raritan River and tributaries thereto in the Borough of Bernardsville are subject to recurrent flooding and recurrently bear loads of debris, silt and other materials; such flooding and such materials waterborne or deposited by water endanger life and damage public and private property and facilities; and these conditions are aggravated by developments and encroachments in and near the watercourses and floodplains thereof; and

Whereas, the watercourses provide water supply and singular recreational opportunities to inhabitants and sustain agriculture, plant life and wildlife including fish and waterfowl; the watercourses therefore constitute a unique and valuable part of the environment of the Borough; and such values are impaired by development and encroachments in and near said watercourses; and

Whereas, the watercourses rise in compact and generally steep watersheds in and near the Borough; such situation interlinks and exaggerates the responses of

the watercourses to local climatic and environmental stresses including developments in and near the watercourses; and such developments and encroachments carelessly conceived or executed therefore incur disproportionate hazard to persons, property and water quality therein and downstream therefrom; and

Whereas, the most appropriate method to alleviate and forestall the conditions and to secure the values set forth herein is through regulation of developments and encroachments in and near watercourses.

It is accordingly found and determined that the paramount public interest in watercourses and floodplains justifies the regulation of property located within and in the vicinity thereof which is in the exercise of the police power of the municipality for the protection of the persons and property of its inhabitants and for the preservation of the public health, safety and general welfare. (Ord. No. 581 § 13-4.2)

#### **14-4.3 Designations and Specifications.**

a. *Designations.* For the purpose of this Article, there are hereby designated in the Borough of Bernardsville:

1. Watercourses;
2. Floodways;
3. Flood hazard areas;
4. Riparian yards.

b. *Flood Map.* Floodways, flood hazard areas and riparian yards are hereby established along all watercourses designated on the map entitled "Flood Map, Borough of Bernardsville, County of Somerset, State of New Jersey," dated Nov. 1971, prepared by the Engineering Department of the Borough of Bernardsville. The Flood Map accompanies this Article and is hereby declared to be a part hereof.\*

c. *Design Flood Profiles.* Design flood profiles given as elevations above the normal surface levels of certain watercourses are hereby established for the watercourses as follows:

1. Mine Brook below the crossing of Seney Drive and above the crossing of United States Route 202, eight (8) feet.
2. Mine Brook below the crossing of United States Route 202, eight (8) feet.
3. Passaic River, seven (7) feet.
4. North Branch of the Raritan River, nine (9) feet.
5. Indian Grave Brook below the crossing of Hardscrabble Road approximately three-fourths (3/4) mile upstream from the mouth of Indian Grave Brook, six (6) feet.

d. *Extent of Floodway.* Floodway is hereby established to encompass the channel of every watercourse designated on the Flood Map and adjacent portions of floodplain of certain watercourses that are not elevated above the design flood profile and that are not located more than a specified distance from the centerline of the channel as follows:

1. Mine Brook below the crossing of Seney Drive and above the crossing of United States Route 202, fifty (50) feet.
2. Mine Brook below the crossing of United States Route 202, one hundred (100) feet.
3. Passaic River, one hundred (100) feet.
4. North Branch of Raritan River, one hundred (100) feet.
5. Indian Grave Brook below the crossing of Hardscrabble Road approximately three-fourths (3/4) mile upstream from the mouth of Indian Grave Brook, fifty (50) feet.

e. *Extent of Flood Hazard Area.* Flood hazard area is hereby established to encompass the floodway of every watercourse designated on the Flood Map and adjacent portions of floodplain that are not elevated above the design flood profiles established in subsection 14-4.3c of this section.

f. *Extent of Riparian Yard.* Riparian yard is hereby established to encompass:

1. For every watercourse with a design flood profile established in subsection 14-4.3c, the channel, floodway, and flood hazard area.
2. For all other watercourses designated on the Flood Map; the channel and contiguous areas that are five (5) feet or less above the low flow elevation of the watercourse. The riparian yard will be measured on each side of the stream from the nearest normally wet point. In areas of flat topography, where the five (5)-foot rule cannot be reasonably applied, the minimum rear yard width of the zone district will be the maximum riparian yard.

g. *Resolution of Doubt.* In cases of doubt or uncertainty as to the exact limit of the floodway, flood hazard area or riparian yard in a proposed development, the Borough Engineer may, upon application of the landowner, determine the precise location of a floodway or flood hazard area limit by close inspection, field survey or other appropriate method, and cause the same to be marked on the ground, notifying the landowner, the Construction Official, and the Planning Board of the results thereof.

(Ord. No. 581 § 13-4.3; Ord. No. 93-970 § 8)

#### **14-4.4 General Regulations.**

Within a riparian yard no structure may be erected, no equipment or goods may be stored, and no landfill, excavation or construction operations may be undertaken except upon application to and specific approval of the Planning Board and, whenever State statute so requires, of the Department of Environmental Protection of the State of New Jersey. Any other use that is allowed (by right or subject to the approval of the Board of Adjustment) in the zone in which the riparian yard is located is permitted provided that it is also subject to the requirements of subsection 14-4.5. Any existing building may be altered subject to the approval of the Planning Board provided that the alteration will not materially affect the floodway or increase the obstruction to the flow of flood waters. The placement of an existing or proposed structure within the extension of a riparian yard resulting from a proposed dam, but outside the resulting flood hazard area, shall not prejudice the construction of the dam or structure. Accepted practices of soil husbandry, planting and harvesting of crops in connection with farming, forestry and arboriculture are not included in the above prohibitions. (Ord. No. 581 § 13-4.4)

#### **14-4.5 Requirements.**

a. *Site Plan.* No activity regulated by subsection 14-4.4 shall hereafter be undertaken within any riparian yard unless and until a Site Plan shall have been submitted to the Planning Board for its review and approval. The Site Plan shall, in addition to the information required in other ordinances, show the following information:

1. The existing and proposed contours at a contour interval of two (2) feet.
2. The proposed elevations of the levels of the lands involved at the corners of the foundation of any existing or proposed structure.
3. The lowest elevation of the lowest proposed area within any proposed structure after its completion.
4. The layout of existing and proposed public streets and the nature, extent and location of existing and proposed public utilities servicing and to service the premises in question.
5. The layout of existing and proposed features that may have material hydrologic effect including, but not limited to, pavements, forests, retaining walls, drains and culverts.
6. The elevation of any existing or proposed pumping facilities.

b. **Impact Report.** An Impact Report, prepared by a professional engineer licensed by the State of New Jersey, shall accompany all Site Plans (except as provided in subsection 14-4.5b8 below) and shall provide information needed to help evaluate the environmental effects of a Proposed Site Plan on any watercourse and shall include the following data:

1. Peak flow rates of storm water runoff expected from the undeveloped site and to be expected as a result of the proposed improvements. The data shall include flow rates for 2-, 5-, 10-, 25-, 50- and 100-year storm frequencies, before and after the Proposed Site Plan activity (reference storm characteristics, including intensity and duration, to be established by the Municipal Engineer), and shall include all calculations.
2. Data on landscaping, vegetation, tree- and ground-cover existing on site compared with that proposed.
3. Plans for disposition of storm water, whether by retention on site or by channeling, so as to protect downstream property.
4. Where the Site Plan encompasses encroachment upon a stream, a Stream Encroachment Permit from the New Jersey Division of Water Resources for fill or diversion of a water channel, alteration of stream, repair or construction of a bridge, culvert, reservoir, dam, wall, pipeline or cable crossing.
5. Description of potential flood levels for the reference storms of subsection 14-4.5b1 above including a summary of flood stages from state and federal sources.
6. An assessment of the probable impact of the Proposed Site Plan upon water quality, water supply, hydrology, vegetation and aquatic organisms.
7. In reviewing the Site Plan, the Planning Board shall take into consideration the effect of the applicant's Proposed Site Plan upon all aspects of the environment as outlined above, including the effects on downstream properties as well as the sufficiency of applicant's proposals for dealing with any immediate or projected adverse environmental effects, taking into account difficulties associated with the application. Specifically, the Site Plan shall include measures, and the sequence of such measures, for controlling flooding, erosion, and sedimentation during and after the period of construction.
8. Notwithstanding the foregoing, the Planning Board may, at the request of the applicant, waive the requirement for an Impact Report if sufficient evidence is submitted to support a conclusion that the Proposed Site Plan will have a slight or negligible environmental impact. Portions of such requirement may likewise be waived upon a finding that a complete report need not be prepared in order to evaluate adequately the environmental impact of a particular Site Plan.

c. **Criteria for Approval.** The Planning Board shall not approve any Site Plan required by this section unless and until the following requirements have been met:

1. The lowest floor including the cellar and all essential services of any proposed structure in a flood hazard area will be at least one (1) foot above the flood hazard area design flood profile.
2. Adequate drainage is provided so as to reduce exposure to flood hazards.
3. New or replacement water supply systems and/or sanitary sewage systems have been designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters and on-site waste disposal systems will be located so as to avoid impairment of them or contamination from them during flooding.
4. Any proposed structure, when built, can be occupied without peril to the health or safety of the occupant.
5. Any proposed structure will not adversely affect the flow in any watercourse.
6. All public utilities such as sewer, gas, electrical and water systems will be located, elevated and constructed to minimize flood damage.
7. All improvements to structures in the Flood Hazard Area will be anchored to prevent flotation, collapse or lateral movement, use construction materials and utility equipment that are resistant to flood damage and use construction methods and practices that will minimize flood damage.
8. **Runoff.** Storm water runoff will be so controlled that there will be no unreasonable increase in on-site and off-site erosion or potential downstream flooding.  
(Ord. No. 581 § 13-4.5)

#### **14-4.6 Time Limits.**

The Planning Board shall act upon any Site Plan within the time limits as provided in this chapter, or as otherwise agreed to by the applicant. Failure of the Planning Board to act within the time limit or limits shall be deemed an approval of any Site Plan submitted under this chapter. Planning Board disapproval shall include written findings upon any Site Plan element found contrary to the provisions or intent of this Article (Ord. No. 581 § 13-4.6).

#### **14-4.7 Issuance of Permits.**

No building permit shall be issued by the Construction Official for any proposed structure to be located within any Riparian yard unless and until the Planning Board shall have approved a Site Plan pursuant to Article 9, Site Plan Review. No Certificate of Occupancy shall be issued by the Construction Official unless and until proof has been submitted to him that all conditions of Site Plan approval have been fully met and complied with. (Ord. No. 581 § 13-4.7)

#### **14-4.8 Appeal.**

Any interested party may appeal to the Governing Body any final approval pursuant to subsection 9-5.7d of this chapter in the manner prescribed in Section 5-3 of this chapter. (Ord. No. 581 § 13-4.8)

#### **14-4.9 Standards.**

In reviewing applications submitted under Article 9, Site Plan Review, the Planning Board shall consider and be guided by the general purposes and policies set forth in subsection 14-4.2, and, in addition, shall apply the following standards:

- a. As to developments in the floodway, primary consideration shall be given to preserving this area for the passage of flood waters without aggravating flood conditions upstream and downstream. Encroachments in the floodway shall therefore be permitted only in cases in which the general public interest will be served, such as parks, playgrounds, bridges, utility rights-of-way, and the like, or where the obstruction to the flow of flood waters is minimal, such as recreational areas, docks, open fencing, suitably designed dams, parking areas, and the like. In no case shall landfill be permitted within the channel or floodway, nor shall the piping of a channel underground be permitted. In addition to the preceding considerations, the considerations of paragraphs b. and c. of this subsection shall apply to the floodway.
- b. As to developments in the flood hazard area outside of the floodway, primary consideration shall be given to the protection of persons and property involved in the development, and such consideration shall not be avoided by the waiver of the applicant. Exceptions from the requirements of subsection 14-4.5 shall therefore be permitted only where the building or structure is not designed or intended as a human dwelling place, is of a monetary value less than ten (10%) percent of the value of the lot or parcel of land upon which it is proposed to be installed, is not intended to house property of a value greater than its own value, and will not by reason of its size, shape, construction or location have any substantial adverse effect upon the functioning of the floodway. In addition to the preceding considerations, the considerations of paragraph c. of this Section shall apply to the flood hazard area.
- c. As to developments in the riparian yard outside the flood hazard area, primary consideration shall be given to the protection of persons and property downstream, and to the preservation of water resources and quality. Developments therein shall therefore be permitted only upon satisfactory evidence that erosion, runoff discharged into the watercourse and changes in level of the water table caused by such development shall be controlled so that hazards of flood and drought downstream will not be augmented, the stability of banks will not be impaired, and the burden of foreign substances in the watercourse including, but not limited to, silt, petroleum products or septic tank effluents, will not be regularly or recurrently augmented.  
(Ord. No. 581 § 13-4.9)

#### **14-4.10 Variances.**

The Planning Board may grant a variance or variances from the standards as outlined in this Section 14-4 provided it specifically finds all of the following:

- a. That there are special circumstances or conditions affecting the premises in question such that the strict application of the standards provided in this section would deprive the owner of the reasonable use of his land.
- b. That the variance or variances requested are necessary for the preservation and enjoyment of a substantial property right of the owner.
- c. That the granting of the variance or variances will not be detrimental to the public health, safety and welfare or injurious to property which could reasonably be affected by such variance.
- d. That the granting of the variance or variances will not have an adverse environmental impact, and
- e. That the variance or variances requested are reasonable and within the general purpose and intent of the regulations, standards and procedures established by this chapter.

(Ord. No. 581 § 13-4.10)

### **14-5 THE FLOOD DAMAGE PREVENTION ORDINANCE.**

#### **14-5.1 Statutory Authorization, Findings of Fact, Purpose and Objectives.**

##### **14-5.1.1 Statutory Authorization**

The Legislature of the State of New Jersey has in N.J.S.A. 40:48-1, et seq., delegated the responsibility to local governmental units to adopt regulations designed to promote public health, safety, and general welfare of its citizenry. Therefore, the Mayor and Council of the Borough of Bernardsville, County of Somerset, State of New Jersey does ordain as follows: (Ord. No. 2003-1301 § 2)

##### **14-5.1.2 Findings of Fact.**

a. The flood hazard areas of the Borough of Bernardsville are subject to periodic inundation which result in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare.

b. These flood losses are caused by the cumulative effect of obstructions in areas of special flood hazard which increase flood heights and velocities, and when inadequately anchored cause damage in other areas. Uses that are inadequately floodproofed, elevated or otherwise protected from flood damage also contribute to the flood loss.

(Ord. No. 2003-1301 § 2)

##### **14-5.1.3 Statement of Purpose.**

It is the purpose of this section 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:

- a. To protect human life and health;
- b. To minimize expenditure of public money for costly flood control projects;
- c. To minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- d. To minimize prolonged business interruptions;
- e. To minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets, bridges located in areas of special flood hazard;
- f. To help maintain a stable tax base by providing for the second use and development of areas of special flood hazard so as to minimize future flood blight areas;
- g. To insure that potential buyers are notified that property is in an area of special flood hazard; and
- h. To ensure that those who occupy the areas of special flood hazard assume responsibility for their actions.

(Ord. No. 2003-1301 § 2)

##### **14-5.1.4 Methods of Reducing Flood Losses.**

In order to accomplish its purposes, this section includes methods and provisions for:

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

(Ord. No. 2003-1301 § 2)

#### **14-5.2 Definitions.**

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

*Appeal* shall mean a request for a review of the Planning Board or Board of Adjustment's interpretation of any provision of this ordinance or a request for a variance.

*Area of Shallow Flooding* shall mean a designated AO or AH zone on a community's Flood Insurance Rate Map with a one (1%) percent or greater chance of flooding to an average depth of one (1) to three (3) feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

*Area of Special Flood Hazard* shall mean the land in the flood plain within a community subject to a one (1%) percent or greater chance of flooding in any given year.

*Base flood* shall mean the flood having a one (1%) percent chance of being equaled or exceeded in any given year.

*Basement* shall mean any area of the building having its floor subgrade (below ground level) on all sides.

*Breakaway Wall* shall mean 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 supporting foundation system.

*Development* shall mean 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, or storage of equipment or materials located within an area of special flood hazard.

*Elevated Building* shall mean a non-basement building (i) built in the case of a building in an area of special flood hazard to have the top of the elevated floor elevated above the ground level by means of piling, columns (posts and piers), or shear walls parallel to the flow of the water, and (ii) adequately anchored so as not to impair the structural integrity of the building during a flood up to the magnitude of the base flood. In an area of special flood hazard "elevated building" also includes a building elevated by means of fill or solid foundation perimeter walls with openings sufficient to facilitate the unimpeded movement of flood waters.

*Flood or Flooding* shall mean a general and temporary condition of partial or complete inundation of normally dry land areas from:

- a. The overflow of inland or tidal waters and/or
- b. The unusual and rapid accumulation or runoff of surface waters from any source.

*Flood Insurance Rate Map (FIRM)* shall mean 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 community.

*Flood Insurance Study (FIS)* shall mean the official report provided in which the Federal Insurance Administration has provided flood profiles, as well as the Flood Insurance Rate Map and the water surface elevation of the base flood.

*Flood Plain Management Regulations* shall mean zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as a flood plain ordinance, grading ordinance and erosion control ordinance) and other applications of police power. The term describes such State or local regulations, in any combination thereof, which provide standards for the purpose of flood damage prevention and reduction.

*Floodway* shall mean 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 0.2 foot.

*Highest Adjacent Grade* shall mean the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

*Historic Structure* shall mean 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 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 have 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 Floor* shall mean the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, useable solely for the parking of vehicles, building access or storage in an area other than a basement is not considered a building's lowest floor provided that such enclosure is not built so to render the structure in violation of other applicable nonelevation design requirements.

*Manufactured Home* shall mean a structure, transportable in one (1) or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term "manufactured home" does not include a "recreation vehicle".

*Manufactured Home Park or Manufactured Home Subdivision* shall mean a parcel (or contiguous parcels) of land divided into two (2) or more manufactured home lots for rent or sale.

*New Construction* shall mean structures for which the start of construction commenced on or after the effective date of a flood plain regulation adopted by a community and includes any subsequent improvements to such structures.

*New Manufactured Home Park or Subdivision* shall mean a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of the flood plain management regulations adopted by the municipality.

*Recreational Vehicle* shall mean a vehicle which is [i] built on a single chassis; [ii] four hundred (400) square feet or less when measured at the longest horizontal projections; [iii] designed to be self-propelled or permanently towable by a light duty truck; and [iv] designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel or seasonal use.

*Start of Construction* (for other than new construction or substantial improvements under the Coastal Barrier Resources Act (P.L. No. 97-3 248) includes substantial improvements and shall mean the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within one hundred eighty (180) days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site such as the pouring of a slab or footings, the installation of piles, the 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 land preparation, such as clearing, grading and filling nor does it include the installation of streets and/or walkways, nor does it include excavation for a basement, footings or 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 structure. 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* shall mean a walled and roofed building, a manufactured home, or a gas or liquid storage tank, that is principally above ground.

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

*Substantial Improvement* shall mean any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which exceeds fifty (50%) percent of the market value of the structure before the "start of construction" of the improvement. This term includes structures which have incurred "substantial damage", regardless of the actual repair work performed. The term does not, however, include either:

- a. 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 officer and which are the minimum necessary to assure safe living conditions, or
- b. Any alteration of a "historic structure", provided that the alteration will not preclude the structure's continued designation as a "historic structure".

*Variance* shall mean a grant of relief from the requirements of this ordinance which permits construction in a manner that would otherwise be prohibited by this subsection.

(Ord. No. 2003-1301 § 2)

## **14-5.3 General Provisions.**

### **14-5.3.1 Lands To Which This Applies.**

This section shall apply to all areas of special flood hazards within the jurisdiction of the Borough of Bernardsville. (Ord. No. 2003-1301 § 2)

#### **14-5.3.2 Basis for Establishing the Areas of Special Flood Hazard.**

The areas of special flood hazard for the Borough of Bernardsville, Community No. 340429, are identified and defined on the following documents prepared by the Federal Emergency Management Agency:

- a. A scientific and engineering report "Flood Insurance Study, Somerset County, New Jersey (All Jurisdictions)" dated September 28, 2007.
- b. Flood Insurance Rate Map for Somerset County, New Jersey (All Jurisdictions) as shown on Index and panel numbers 0014, 0018, 0032, 0034, 0051, 0052, 0053, 0054, 0056, 0058; whose effective date is September 28, 2007.

The above documents are hereby adopted and declared to be a part of this section. The Flood Insurance Study and maps are on file at 166 Mine Brook Road, Bernardsville, NJ, 07924-2112.

(Ord. No. 2003-1301 § 2; Ord. No. 2007-1466 § 1)

#### **14-5.3.3 Abrogation and Greater Restrictions.**

This section is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this ordinance and other ordinance, easement covenant, or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail. All matters relative to practice, procedure, jurisdiction, duties and obligations of the Planning Board, Board of Adjustment and Governing Body as outlined in this section and the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq. shall prevail where differences or conflicts with existing ordinances occur. (Ord. No. 2003-1301 § 2)

#### **14-5.3.4 Interpretation.**

In the interpretation and application of this section, all provisions shall be:

- a. Considered as minimum requirements;
- b. Liberally construed in favor of the governing body; and,
- c. Deemed neither to limit nor repeal any other powers granted under State statutes.

(Ord. No. 2003-1301 § 2)

#### **14-5.3.5 Warning and Disclaimer of Liability.**

The degree of flood protection required by this section 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 section 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 damages.

This section shall not create liability on the part of the Borough of Bernardsville any officer or employee thereof or the Federal Insurance Administration, for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made thereunder. (Ord. No. 2003-1301 § 2)

#### **14-5.4 Administration.**

##### **14-5.4.1 Establishment of Development Permit.**

A Development Permit shall be obtained before construction or development begins within any area of special flood hazard established in subsection 14-5.3.2. Application for a Development Permit shall be made on forms furnished by the Planning Board or Board of Adjustment and may include, but not be limited to; plans in duplicate drawn to scale by a professional engineer licensed in the State of New Jersey showing the nature, location, dimensions, and elevations of the area in question; existing or proposed structures, fill, storage of materials, drainage facilities; and the location of the foregoing.

Specifically, the following information is required:

- a. Elevation in relation to mean sea level, of the lowest floor (including basement) of all structures;
- b. Elevation in relation to mean sea level to which any structure has been floodproofed.
- c. Certification by a registered professional engineer or architect that the flood proofing methods for any nonresidential structure meet the flood proofing criteria in subsection 14-5.5.2b; and,
- d. Description of the extent to which any watercourse will be altered or relocated as a result of proposed development.

(Ord. No. 2003-1301 § 2)

##### **14-5.4.2 Designation of the Local Floodplain Administrator.**

The Borough Engineer is hereby appointed to administer and implement this section by granting or denying development permit applications in accordance with its provisions. (Ord. No. 2003-1301 § 2; Ord. No. 2018-1771)

##### **14-5.4.3 Duties and Responsibilities of the Administrator.**

Duties of the Planning Board or Board of Adjustment shall include, but not be limited to:

- a. *Permit Review.*
  1. Review all development permits to determine that the permit requirements of this ordinance have been satisfied.
  2. Review all development permits to determine that all necessary permits have been obtained from those Federal, State or local governmental agencies from which prior approval required.
  3. Review all development permits to determine if the proposed development is located in the floodway, assure that the encroachment provisions of subsection 14-5.5.c,1 are met.
- b. *Use of Other Base Flood and Floodway Data.* When base flood elevation and floodway data has not been provided in accordance with subsection 14-5.3.2, Basis for Establishing the Areas of Special Flood Hazard, the Planning Board or Board of Adjustment 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 subsections 14-5.5.2a, Specific Standards, Residential Construction, and 14-5.5.2b, Specific Standards, Nonresidential Construction.
- c. *Information to Be Obtained and Maintained.*
  1. Obtain and record the actual elevation (in relation to mean sea level) of the lowest floor (including basement) of all new or substantially improved structures, and whether or not the structure contains a basement.
  2. For all new or substantially improved floodproofed structures:
    - (a) Verify and record the actual elevation (in relation to mean sea level); and
    - (b) Maintain the flood proofing certifications required in subsection 14-5.4.1c.
  3. Maintain for public inspection all records pertaining to the provisions of this section.
- d. *Alteration of Watercourses.*



1. Notify adjacent communities and the New Jersey, Department of Environmental Protection prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Insurance Administration.

2. Require that maintenance is provided within the altered or relocated portion of said watercourse so the flood carrying capacity is not diminished.

e. *Interpretation of Firm Boundaries.* Make interpretations where needed, as to the exact location of the boundaries of the areas of special flood hazards (for example, where there appears to be a conflict between a mapped boundary and actual filed conditions). The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in subsection 14-5.4.4.

The Planning Board or Board of Adjustment shall not approve any development permit required by this section unless and until it is satisfied that the requirements of subsection 14-5.5 have been met.

(Ord. No. 2003-1301 § 2)

#### **14-5.4.4 Variance Procedure.**

##### **14-5.4.4.1 Appeal Board.**

a. The Planning Board or Board of Adjustment as established by the Borough of Bernardsville shall hear and decide appeals and requests for variances from the requirements of this section.

b. The Planning Board or Board of Adjustment shall hear and decide appeals when it is alleged there is an error in any requirement, decision, or determination made by the any Borough Officer in the enforcement or administration of this section.

c. Those aggrieved by the decision of the Planning Board or Board of Adjustment, or any taxpayer, may appeal such decision to the Superior Court of New Jersey, as provided in the Municipal Land Use Law.

d. In passing upon such applications, the Planning Board or Board of Adjustment, shall consider all technical evaluations, all relevant factors, standards specified in other sections of this section, and:

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

2. The danger to life and property due to flooding or erosion damage;

3. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;

4. The importance of the services provided by the proposed facility to the community;

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

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

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

8. The relationship of the proposed use to the comprehensive plan and flood plain management program of that area;

9. The safety of access to the property in times of flood for ordinary and emergency vehicles;

10. The expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site; and,

11. 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.

e. Upon consideration of the factors of Section 14-5.4.4a,4 and the purposes of this section, the Planning Board or Board of Adjustment may attach such conditions to the granting of variances as it deems necessary to further the purposes of this section.

f. The Planning Board or Board of Adjustment shall maintain the records of all appeal actions, including technical information, and report any variances to the Federal Insurance Administration upon request.

(Ord. No. 2003-1301 § 2)

##### **14-5.4.4.2 Conditions for Variances.**

a. Generally, variances may be issued for new construction and substantial improvements to be erected on a lot of one-half (1/2) acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing items (1-11) in subsection 14-5.4.4.1d. have been fully considered. As the lot size increases beyond the one-half (1/2) acre, the technical justification required for issuing the variance increases.

b. Variances may be issued for the repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation 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.

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

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

e. Variances shall only be issued upon:

1. A showing of good and sufficient cause;

2. A determination that failure to grant the variance would result in exceptional hardship to the applicant; and,

3. A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public as identified in subsection 14-5.4.4.1d, or conflict with existing local laws or ordinances.

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

(Ord. No. 2003-1301 § 2)

#### **14-5.5 Provisions for Flood Hazard Reduction.**

##### **14-5.5.1 General Standards.**

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

a. *Anchoring.*

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

2. All manufactured homes shall be 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.

b. *Construction Materials and Methods.*

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

2. All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damage.

c. *Utilities.*

1. All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system;
2. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharge from the systems into flood waters;
3. On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding; and
4. Electrical, heating, ventilation, plumbing and air-conditioning equipment and other service facilities shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

d. *Subdivision Proposals.*

1. All subdivision proposals shall be consistent with the need to minimize flood damage:
2. All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage;
3. All subdivision proposals shall have adequate drainage provided to reduce exposure to flood damage; and,
4. Base flood elevation data shall be provided for subdivision proposals and other proposed development which contain at least fifty (50) lots or five (5) acres (whichever is less).

e. *Enclosure Openings.* All new construction and substantial improvements having fully enclosed areas below the lowest floor that are usable solely for parking of vehicles, building access or storage in an area other than a basement and which are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or must meet or exceed the following minimum criteria: A minimum of two (2) openings having a total net area of not less than one (1) square inch for every square foot of enclosed area subject to flooding shall be provided. The bottom of all openings shall be no higher than one (1) foot above grade. Openings may be equipped with screens, louvers, or other covering or devices provided that they permit the automatic entry and exit of floodwaters.

(Ord. No. 2003-1301 § 2)

#### **14-5.5.2 Specific Standards.**

In all areas of special flood hazards where base flood elevation data have been provided as set forth in subsection 14-5.3.2, Basis for Establishing the Areas of Special Flood Hazard or in subsection 14-5.4.3b, Use of Other Base Flood Data, the following standards are required:

a. *Residential Construction.*

1. New construction and substantial improvement of any residential structure shall have the lowest floor, including basement, elevated one (1) foot above base flood elevation;
2. Require within any AO zone on the municipality's FIRM that all new construction and substantial improvement of any residential structure shall have the lowest floor, including basement, elevated above the highest adjacent grade at least as high as the depth number specified in feet (at least two (2) feet if no depth number is specified). And, require adequate drainage paths around structures on slopes to guide floodwaters around and away from proposed structures.

b. *Nonresidential Construction.*

1. New construction and substantial improvement of any commercial, industrial or other nonresidential structure shall either have the lowest floor, including basement, elevated one (1) foot above the base flood elevation or together with the attendant utilities and sanitary facilities, shall;
2. Be required within any AO zone on the municipality's FIRM that all new construction and substantial improvement of any commercial, industrial or other nonresidential structure shall either have the lowest floor, including basement, elevated above the highest adjacent grade at least as high as the depth number specified in feet (at least two (2) feet if no depth number is specified) and, require adequate drainage paths around structures on slopes to guide floodwaters around and away from proposed structures; or
3. Be floodproofed so that below the base flood level the structure is watertight with walls substantially impermeable to the passage of water;
4. Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy; and,
5. Be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting the applicable provisions of this subsection. Such certification shall be provided to the official as set forth in subsection 14-5.4.3c,2.

c. *Manufactured Homes.*

1. Manufactured homes shall be anchored in accordance with subsection 14-5.5.1a,2.
2. All manufactured homes to be placed or substantially improved within an area of special flood hazard shall be elevated on a permanent foundation such that the top of the lowest floor is elevated one (1) foot above the base flood elevation.

d. *Mobile Homes.*

1. Mobile homes, mobile home parks and mobile home subdivisions are prohibited in areas of special flood hazards.
- (Ord. No. 2003-1301 § 2)

#### **14-5.5.3 Floodways.**

Located within areas of special flood hazard established in subsection 14-5.5.3a are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of flood waters which carry debris, potential projectiles, and erosion potential, the following provisions apply:

- a. Prohibit encroachments, including fill, new construction, substantial improvements, and other development unless a technical evaluation demonstrates that encroachment shall not result in any increase in flood levels during the occurrence of the base flood discharge.
  - b. If subsection 14-5.5.3a is satisfied, all new construction and substantial improvements must comply with subsection 14-5.5.0 Provisions for Flood Hazard Reduction.
  - c. In all areas of special flood hazard in which base flood elevation data has been provided and no floodway has been designated, the cumulative effect 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 two-tenths (0.2) of a foot at any point.
- (Ord. No. 2003-1301 § 2)

#### **14-5.6 Penalties, Validity, Repealer and Effective Date.**

##### **14-5.6.1 Penalties for Noncompliance.**

No structure or land shall hereafter be constructed, located, extended, converted, or altered without full compliance with the terms of this section and other applicable regulations. Violation of the provisions of this ordinance by failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with conditions) shall constitute a misdemeanor. Any person who violates this section or fails to comply with any of its requirements shall upon conviction thereof be fined not more than one thousand (\$1,000.00) dollars or imprisoned for not more than ninety (90) days, or both, for each violation, and in addition shall pay all costs and expenses involved in the case. Nothing herein contained shall prevent the Borough of Bernardsville from taking such other lawful action as is necessary to prevent or remedy any violation. (Ord. No. 2003-1301 § 2)



### 14-5.6.2 Validity.

If any section, paragraph, sentence, clause, phrase or other portion of this section shall for any reason be held invalid by any court, the same shall not affect the validity or effect of the remaining provisions of this section. (Ord. No. 2003-1301 § 2)

### 14-5.6.3 Repealer.

Ordinance No. 776, adopted November 16, 1987, and any amendments thereof are hereby repealed in their entirety. (Ord. No. 2003-1301 § 2)

#### 14-5.6.4 Effective Date.

This section shall take effect upon final passage and publication as provided by law. (Ord. No. 2003-1301 § 2)

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\***Editor's Note:** The Flood Map referred to herein can be found on file in the Borough Offices.

## ARTICLE 14 ENVIRONMENTAL REQUIREMENTS

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