



Inter-Office Memorandum

TO: Development Review Committee **DATE:** December 12, 2014

FROM: John G. Thomson, AICP
Land Development Manager

SUBJECT: Flood Hazard Management Variance
2015-P-FHM-0019, RSN 802453
Parcel Number: 8505-01-44-0630
Property Address: 6299 Engram Road, New Smyrna Beach, Florida 327169

Mr. Mark A. Watts, Esquire, attorney for Mr. and Mrs. Liebovitz, the owners of an existing two-story single-family residence, is requesting a variance from the Flood Hazard Management requirements of Section 72-749(b)(1) of Article III *Land Development*, Chapter 72 Code of Ordinances (LDC). The variance requested is from the current base flood elevation of 7.0 feet to allow existing habitable space on the ground floor to remain in place with a finished floor elevation of 4.5 feet.

The property is located on the northeast corner of Engram Road and Drum Avenue, in the unincorporated area of Bethune Beach.

The home was originally constructed in 1988 on masonry columns as an elevated building approximately 10 feet above a concrete slab placed on the finished grade. The ground floor was enclosed under a permit in 1995 with break-away walls, with the use of this area limited to parking, access, and storage. After construction of the enclosure, and prior to purchase by Mrs. Liebovitz's mother in 1998, the enclosed space was converted into habitable living space. The original conversion and subsequent interior work were accomplished without benefit of building permit review that would have pointed out that the conversion did not meet the LDC, because the finished ground floor is 2.5 feet below the base flood elevation. The property is subject to a code enforcement action to address the conversion that is currently on hold awaiting action by the Development Review Committee (DRC) on this variance request.

This request raises several key issues for DRC to consider, as addressed in the attached correspondence dated November 24, 2014, with information on FEMA guidelines related to variances, from Mr. Michael Nelson, the county's Chief Building Official and correspondence dated November 20, 2014, from Mr. Larry LaHue, of the county's Emergency Operations Center. The correspondence is in response to Mr. Watt's attached letter of November 13, 2014, in support of the variance under the specific criteria listed in Section 72-750(c) of the LDC for consideration of the request.

First, the enclosure of the ground floor space was accomplished in 1995 under a building permit consistent with the regulations at the time, with break-away walls, because this area was below the base flood elevation. The walls are engineered to fail under flooding and high wind conditions recognizing that the property is located in a Special Flood Hazard Area. This protects the second floor living space, but places the first floor occupants in a hazardous and, quite possibly, life threatening situation.

Secondly, although the representative for the owner indicates that his clients are willing to accept the risk, if the variance is granted, it also creates a potential life safety issue for neighbors, placing them at risk as well. This is due to the finished condition of the ground floor space that can create a substantial increase in debris that could be swept onto other property in the immediate area during a flood and high wind event.

Thirdly, the county is a participant in the Community Rating System (CRS) program as part of the National Flood Insurance program. The county has earned a class rating of five (5) under this system, which provides a 25% flood insurance premium discount to residents in the Special Flood Hazard Areas. The program is overseen by FEMA, which would review any variances granted to the county's flood protection regulations. The FEMA guidelines for use in considering in granting variances are stringent, as pointed out by in Mr. Nelson's correspondence, as it relates to the conditions for granting a variance in Section 72-750(d) of the LDC. As indicated by both Mr. Nelson and Mr. LaHue, granting the variance could jeopardize the county's participation in the program if FEMA officials determine that the variance is unjustified, as it most likely will be based on the experience of county staff.

Recommendation:

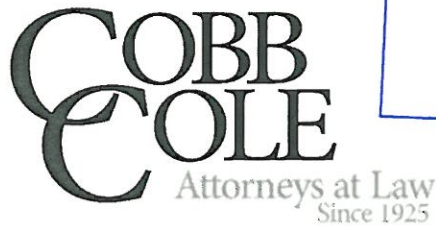
Deny the request as not justified under the conditions stated in Section 72-750(d) of the LDC for granting a variance, as addressed in the November 24, 2014, letter from Mr. Nelson, and require that corrective measures be taken so that the requirements of Section 72-549 of the LDC are met.

Please be prepared to discuss and take action on this request at the December 16, 2014, DRC meeting. Feel free to call me if you have any questions. Thank you.

JGT/jgt

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November 13, 2014

VIA HAND DELIVERY

John G. Thomson, Land Development Manager
County of Volusia
123 W. Indiana Avenue; Room 202
DeLand, FL 32720

Re: Liebovitz, Barry and Melissa
Flood Hazard Management Variance Application
Property Address: 6299 Engram Road, New Smyrna Beach, FL
Parcel ID#: 8505-01-44-0630

Dear Mr. Thomson:

Our firm has the pleasure of representing Mr. and Ms. Liebovitz with respect to their property at the above referenced address. Enclosed, please find our request for a variance to the base flood elevation for occupied portions of the ground floor of the home located at the above referenced address. The current base flood elevation for the property is 7 feet. We are requesting a variance to allow existing habitable space on the ground floor to remain in place with a finished floor elevation of 4.5 feet.

Also enclosed please find the Notarized Authorization of Owner and applicable fee.

Ownership History:

Mr. and Mrs. Liebovitz acquired full title to the property in question on March 30, 2012 (see attached Quit Claim deed recorded at OR Book 6704, Page 1884 of the Public Records of Volusia County, Florida). Prior to that, the Liebovitzes' acquired a fee simple interest in the property on July 29, 2009 from Mrs. Liebovitz's mother, Margaret Oliver, subject to a life estate for Mrs. Oliver (see attached deed recorded at O.R. Book 6401, Page 591 of the Public Records of Volusia County, Florida). Mrs. Oliver and her husband, Raymond, originally acquired the

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property from Clinton and Marcy Chapman on November 17, 1998 (see attached Warranty Deed recorded at O.R. Book 4369, Page 4171 of the Public Records of Volusia County, Florida).

Permitting History:

The residence on the property was initially constructed as a stilted, elevated structure in 1988. In 1995, a permit was issued to enclose the bottom of the structure as enclosed storage (Volusia County Permit # 19950530005). When the residence was initially purchased by Mrs. Liebovitz's parents in 1998, the enclosed ground floor was already in use as conditioned living space. Since 1998, several permits relevant to the use of the ground floor space as conditioned living space were issued.

In 2008, Volusia County Permit # 20080924046 was issued for the installation of new windows and doors for both floors of the residence. While it appears a final inspection was not requested for this permit, the permit did include replacement of the sliding glass door on the ground floor as part of the scope of work.

Volusia County Permit # 20100113024 was issued in January 2010 in connection with framing repair work, electrical and plumbing repairs. This work was initially commenced without a permit, but was determined to require a permit after a complaint was received by the County from a neighbor. The permit notes that the first floor space was habitable at the time the work was done.

Volusia County Permit # 20110504004 was issued in May 2011 for interior renovations connected with the partition of a portion of the downstairs of the residence for a home office. Work performed under this permit was commenced without a permit. After a complaint was received by the County from a neighbor, it was determined that the work being done required a permit. This permit related to work being done on the ground floor of the residence.

Volusia County Permit # 20110628004 was issued in June 2011 for replacement of an HVAC system. At the time this work was done, HVAC systems for both floors were in place at the residence. The documentation associated with this permit noted that the scope of work included plans to "move existing condensing unit from upstairs system to downstairs system."

At all times since the Liebovitzes' purchase of the property, the ground floor space was included in the tax bill from Volusia County as habitable living area. Mr. and Mrs. Liebovitz have invested considerable funds on renovations to the first floor living space and relied on the availability of that space in making the decision to acquire the residence. The continued availability of that space for use as part of their residence is being requested through this variance request so they can avoid the loss of their investment in the property.

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Variance Criteria:

In reviewing this application, DRC is required to consider the factors set out in Section 72-744(b), as follows:

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

The continuing use of the ground floor as requested through this variance will not increase the likelihood that materials will be swept onto the lands of others. The original enclosure of the ground floor space was done under a valid permit in 1995 and met the code requirements in place at that time for construction in a coastal high hazard area. There is no increase in risk associated with this criteria by allowing the enclosed space to continue to be used as habitable space versus storage space.

2. The danger of life and property due to flooding or erosion control.

The proposed variance does not increase danger to life or property. The property is located in a Flood Hazard Zone according to the 2014 FEMA maps. The variance will not change the classification of the property with regard to its susceptibility to flooding and the Liebovitzes' acknowledge that they bear any risks associated with the location of their residence.

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

There have not been any flooding events impacting the property since it was acquired by Mr. and Mrs. Oliver in 1998. Mr. and Mrs. Liebovitz acknowledge that they bear any risks associated with maintaining a residence in a flood zone, including any risk of loss of the contents of the ground floor, whether used for storage or habitable space. The property was included in the

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

There are no community services proposed in connection with this residence.

5. The necessity of the facility to a waterfront location, in the case of a functionally dependent facility.

This residence is not functionally dependent on being in a waterfront location. The property in question is not waterfront, but is located on a barrier island in close proximity to the beach and intercoastal waterway.

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

Since this request relates to an existing structure, located on a valid legal lot, this criteria is not applicable.

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

The overall use of the property and structure is consistent with the surrounding area's existing development for single family residential use.

8. The relationship of the proposed use to the Comprehensive Plan and floodplain management program for that area.

The use of the property for single family residential purposes is consistent with the Comprehensive Plan. The area is classified for Urban, Low Intensity use under the comprehensive plan and the existing R-9W zoning is consistent with that use. The proposed variance will not impact floodplain management as it will not result in any increase to lot coverage or impervious area on the lot that could require compensating storage.

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

Access to the property is provided by the existing County maintained road system. The proposed variance will not change the character of the existing road system and access will remain as currently provided for both 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.

The proposed variance will not change any of the conditions anticipated at the site during a flood or storm event. The property is located in a Flood Hazard Zone based on the 2014 FEMA maps.

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

The proposed variance will not impact the costs of providing governmental services beyond the costs associated with the current conditions of this area of the County.

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We believe that sufficient justification exists to grant the requested variance and permit the continued use of the ground floor of the residence as habitable living space. I am happy to meet with County staff at any time prior to the DRC meeting to discuss this application in more detail, discuss alternative resolutions or answer any questions. Please do not hesitate to contact me at the number or email address listed below.

Sincerely,



Mark A. Watts
Mark.Watts@CobbCole.com
Fax (386) 944-7966

MAW;jnl
Enclosures

cc: Mr. and Mrs. Liebovitz



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November 24, 2014

Mr. John Thompson, Land Development Manager
County of Volusia
123 W. Indiana Avenue
DeLand, FL 32720

RE: Building Division Staff Comments
Flood Hazard Management Variance Application
6299 Engram Road
New Smyrna Beach, FL 32169
Parcel # 8505-01-44-0630

Recommendation: Denial

Dear Mr. Thompson:

Please allow this letter to serve as a response to the Flood Hazard Management Variance request for the Liebowitz residence referenced above. Basically, the variance application seeks to allow the continued use of finished living space on the bottom floor of this two story structure that was installed in a space previously enclosed with break-away walls without the benefit of required permits and inspection approvals (Violation CEB2014099). The building is located in the Special Flood Hazard Area (Flood Zone AE) and the floor level of the first floor living space is 2 ½ feet below the Base Flood Elevation. This raises several issues in addition to the issue that the work was done without required permits or inspection approvals:

- The structure is classified as an elevated building and the ground floor space was originally enclosed in 1995 under an issued permit by installing break-away (frangible) walls due to the floor being below the Base Flood Elevation. See ordinance excerpt below:

Sec. 72-749. - Provisions for flood hazard reduction.

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

- a. Designs for complying with this requirement must either be certified by a professional engineer or architect or meet the following minimum criteria:*
 - 1. Provide a minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding;*
 - 2. The bottom of all openings shall be no higher than one foot above foundation adjacent interior grade (which must be equal to or higher in elevation than the adjacent exterior grade); and*
 - 3. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided they provide the required net area of the openings and permit the automatic flow of floodwaters in both directions.*
- b. Electrical, plumbing and other utility connections are prohibited below the base flood elevation;*

- c. *Fully enclosed areas below the lowest floor shall be used solely for parking of vehicles, storage, and building access. Access to the enclosed area shall be the minimum necessary to allow for parking of vehicles (garage door), limited storage of maintenance equipment used in connection with the premises (standard exterior door), Nor entry to the living area (stairway or elevator); and*
- d. *The interior portion of such enclosed area shall not be finished or partitioned into separate rooms.*

After completion of the 1995 enclosure permit and before the 1998 purchase, the enclosed space was converted into living space. The enclosure authorized under the 1995 permit was designed for the enclosed space to be used for limited parking, access and storage. The design of the space is required to preclude use as finished living space because the walls are of engineered design and intended to fail under flooding and high wind situations. This protects the main living space above during these types of events, but would put occupants of this space in harm's way.

- The floor of this un-permitted finished space is 2 1/2 feet below the Base Flood Elevation. This is in violation of Volusia County's Flood Hazard Management Ordinance. If the violation is not corrected or a variance is granted for living space to be allowed below the Base Flood Elevation, Volusia County could face penalties such as having the Flood Program being placed on probation or more severely placed on suspension per 44CFR, Subchapter B, § 59.24 suspension of community eligibility for not following the requirements of our Flood Plain Management Ordinance. In a real sense, this could affect the cost and ability to purchase or renew flood insurance policies. All variances below the Base Flood Elevation granted by local municipalities are subject to review and administrative action by FEMA if determined not to be justified. Further, a granted variance and the reasons for same would be subject to review during the CRS (flood insurance discount program) audit due next year and the next scheduled audit of our program by FEMA Region IV.
- Listed below in red are staff comments regarding Mr. Watt's responses for the Variance Criteria items to be considered listed in the ordinance:

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

The continuing use of the ground floor as requested through this variance will not increase the likelihood that materials will be swept onto the lands of others. The original enclosure of the ground floor space was done under a valid permit in 1995 and met the code requirements in place at that time for construction in a coastal high hazard area. There is no increase in risk associated with this criteria by allowing the enclosed space to continue to be used as habitable space versus storage space.

To comply with the requirements of an elevated structure which has a ground floor enclosure, the interior of the space is to be open and un-partitioned. The ground floor of this structure is partitioned into living space, contains plumbing electrical and mechanical systems and purportedly a full kitchen. This is a substantial increase in the amount of debris that would be swept onto adjacent properties during an event.

2. The danger of life and property due to flooding or erosion control.

The proposed variance does not increase danger to life or property. The property is located in a Flood Hazard Zone according to the 2014 FEMA maps. The variance will not change the classification of the property with regard to its susceptibility to flooding and the Liebovitzes' acknowledge that they bear any risks associated with the location of their residence.

As stated above, the walls are designed as frangible. The exterior walls were designed to fail at 20 PSF of wind pressure or if flood waters were to reach a depth of more than 1 foot. This floor is located 2 1/2 feet below the Base Flood Elevation. As this structure is located in a Special Flood Hazard Area and on a barrier island and in the wind born debris region, it is susceptible to both flooding and wind events. Occupancy of this area during an event definitely becomes a life safety issue.

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

There have not been any flooding events impacting the property since it was acquired by Mr. and Mrs. Oliver in 1998. Mr. and Mrs. Liebovitz acknowledge that they bear any risks associated with maintaining a residence in a flood zone, including any risk of loss of the contents of the ground floor, whether used for storage or habitable space. The property was included in the

The floor level of the enclosed un-permitted living area is 2 ½ feet below the Base Flood Elevation in an area mapped in the Special Flood Hazard Area by FEMA and reconfirmed to be in the Special Flood Hazard Area on the latest revised Flood Insurance Rate Maps dated February 19, 2014. The flood hazard boundaries are based on the 1 foot contour mapping developed from recent aerial LIDAR information. The property and residence are susceptible to flooding and have been identified as such by accepted engineering practices and public flood map revision processes. Mr. and Mrs. Liebovitz may be willing to accept the financial risks associated with an event, but current owners accepting risk is not an option with FEMA nor is it a reason for a variance to be granted. Flood insurance rates on this structure with the lowest habitable floor as it currently sits would need to be set by FEMA in Washington and would be exorbitant.

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

There is no community services proposed in connection with this residence.

No comment.

5. The necessity of the facility to a waterfront location, in the case of a functionally dependent facility.

This residence is not functionally dependent on being in a waterfront location. The property in question is not waterfront, but is located on a barrier island in close proximity to the beach and intercoastal waterway.

No comment.

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

Since this request relates to an existing structure, located on a valid legal lot, this criteria is not applicable.

No Comment.

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

The overall use of the property and structure is consistent with the surrounding area's existing development for single family residential use.

No comment.

8. The relationship of the proposed use to the Comprehensive Plan and floodplain management program for that area.

The use of the property for single family residential purposes is consistent with the Comprehensive Plan. The area is classified for Urban, Low Intensity use under the comprehensive plan and the existing R-9W zoning is consistent with that use. The proposed variance will not impact floodplain management as it will not result in any increase to lot coverage or impervious area on the lot that could require compensating storage.

No comment.

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

Access to the property is provided by the existing County maintained road system. The proposed variance will not change the character of the existing road system and access will remain as currently provided for both ordinary and emergency vehicles.

No comment.

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.

The proposed variance will not change any of the conditions anticipated at the site during a flood or storm event. The property is located in a Flood Hazard Zone based on the 2014 FEMA maps.

No comment

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

The proposed variance will not impact the costs of providing governmental services beyond the costs associated with the current conditions of this area of the County.

No comment.

- Listed below in green are FEMA guidelines that should be considered when contemplating the merits of the variance request regarding the *Conditions for Variances* listed in the Flood Hazard Management section of the ordinance:

72-750 (d) *Conditions for variances.*

(1) Variances shall only be issued when there is:

a. A showing of good and sufficient cause;

The variance must pertain to the land itself, not to the structure, its inhabitants or the property owner. A variance should not be granted for a problem that can be resolved through other means, even if the value of the property will drop somewhat, it will be inconvenient for the property owner, the owner doesn't have enough money to comply, the property will look different from others in the neighborhood, the owner started without a permit and now it will cost a lot to bring the building into compliance.

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

Federal regulations state that a community can only issue a variance upon "a determination that failure to grant the variance would result in exceptional hardship to the applicant". Additional guidance states: "The applicant has the burden of proving unnecessary hardship." Reasons for granting the variance must be substantial; the proof must be compelling. The claimed hardship must be exceptional, unusual and peculiar to the property involved. Financial hardship, inconvenience, aesthetic considerations, physical handicaps, personal preferences or the disapproval of one's neighbors do not qualify as exceptional hardships.

c. A determination that the granting of a variance will not result in an increased flood height, threat to public safety, an increase in public expense, create a nuisance, obstruct the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal or basin, or conflict with existing local laws or ordinances.

(2) Variances shall only be issued upon a determination that the variance is the minimum necessary deviation from the requirements of this division.

The variance must be the minimum necessary, considering the flood hazard, to afford relief. A variance is a request to vary from the rules, not to ignore them. Any variance should allow only minimum deviation from the local requirements. The approved project should provide as much flood protection as possible.

- (3) The floodplain administrator shall maintain the records of all variance actions, including justification for their issuance or denial, and report such variances in the community's NFIP biennial report and upon request to FEMA and the State of Florida, Department of Community Affairs, NFIP Coordinating Office.

Although a municipal appeals board has the authority to decide whether or not a variance is granted, the Federal Emergency Management Agency (FEMA) may review the community's findings. If that review indicates a pattern inconsistent with the objectives of sound floodplain management, the community can be subjected to probation or suspension from the National Flood Insurance Program.

The fact remains that ground floor of this structure is 2 ½ feet below the base flood elevation and never was eligible to become living space. While it is no fault of the current owners, "Code violations 'run with land' and subsequent purchasers can be held responsible for bringing their property up to code." The space was converted to living space and currently is in violation of the Flood Hazard Management Ordinance. The applicant's claim of hardship in this case does not outweigh the purpose of the ordinance or the consequences for granting a variance that cannot be justified as meeting FEMA's guidelines. Staff recommends denial of this application for variance.

Sincerely,



Michael C. Nelson
Chief Building Official

CC: Don Vancini, Building and Zoning Director
Larry LaHue, Planner II and Grant Coordinator

Floodplain Management Variances

*A variance is a grant of relief from the terms of a floodplain management regulation. This generally involves allowing development that is contrary to good floodplain management practices. Because the result can be an increased risk to life and property, **the granting of floodplain variances should be rare.***

Local Floodplain Development Permit

Responsibility for issuing or denying Floodplain Development Permits lies with the Local Floodplain Administrator. If a proposed project does not comply with the municipality's floodplain development standards, the Local Floodplain Administrator should deny the permit and provide a written summary of project deficiencies. The applicant may then revise and resubmit the application or request a hearing from the designated appeals board.

Appeals

If the applicant alleges an error in the decision or determination made by the Local Floodplain Administrator, the appeal is heard and decided by the designated appeals board. If the applicant requests a variance from local floodplain development requirements, the variance request must be supported by a written justification. The request for variance should never be an after-the-fact request for a non-compliant project.

Local Variance Procedure

The appeals board considers a variance request at one or more public meetings at which they seek (1) testimony from the Local Floodplain Administrator about how the proposed activity fails to meet local floodplain development standards and (2) testimony from the applicant as to why it is infeasible or impossible to make the proposed development conform. Complete records should be kept of all deliberations and actions of the board. (Use of a *Floodplain Variance Findings & Decision* form is recommended.)

Although a municipal appeals board has the authority to decide whether or not a variance is granted, the Federal Emergency Management Agency (FEMA) may review the community's findings. If that review indicates a pattern inconsistent with the objectives of sound floodplain management, the community can be subjected to probation or suspension from the National Flood Insurance Program.

Considerations and Conditions

Each municipality's Flood Damage Prevention regulations specify factors that must be considered and conditions that must be met prior to granting a floodplain variance. Both the applicant and the appeals board should refer to these regulations to ensure that each issue is addressed in the applicant's written justification and carefully considered during the board's deliberations. Key issues are discussed below.

Good and Sufficient Cause

Because floodplain management regulations do not anticipate every imaginable situation, the variance process allows a developer to seek permission to vary from the letter of the rules because of a special situation. However, ***the variance must pertain to the land itself – not to the structure, its inhabitants, or the property owner.*** A variance should not be granted for a problem that can be resolved through other means, even if the alternative is more expensive, more complicated, requires that the parcel be put to a different use, or requires the applicant to build elsewhere.

Exceptional Hardship

Federal regulations state that a community can only issue a variance upon "a determination that failure to grant the variance would result in exceptional hardship to the applicant." Additional guidance states: "***The applicant has the burden of proving unnecessary hardship.***" Reasons for granting the variance must be substantial; the proof must be compelling. The claimed hardship must be exceptional, unusual and peculiar

to the property involved. Financial hardship, inconvenience, aesthetic considerations, physical handicaps, personal preferences or the disapproval of one's neighbors do not qualify as exceptional hardships."¹

Minimum Variation Necessary

The variance must be the minimum necessary, considering the flood hazard, to afford relief. A variance is a request to vary from the rules, not to ignore them. Any variance should allow only minimum deviation from the local requirements. The approved project should provide as much flood protection as is possible.

Regulatory Floodway

Variances shall not be issued within any regulatory floodway if any increase in flood levels during the base flood discharge would result. Because the community should not be exposed to higher flood risks, federal standards prohibit variances from the requirements concerning floodway encroachments.

When Might a Variance Be Warranted?

Special circumstances may justify granting a variance:

- **Deviation from Higher Standards:** When a municipality's floodplain management standards exceed the minimum federal requirements, some situations may warrant deviation from those higher standards.
- **Small Lot:** Although variances are strongly discouraged, the technical justification required for a building that fails to meet elevation requirements is lower if it is erected on a lot of one-half acre or less and surrounded by lots with existing structures constructed below the base flood elevation.
- **Wet Floodproofing:** Variances that allow protection from flood damage using wet floodproofing techniques may be issued for structures that are: functionally dependent on close proximity to water (such as boat houses), historic buildings (if the historic character is preserved), accessory structures, and certain agricultural structures. The variance may be contingent on limited use of the structure (for storage, parking, or agricultural purposes). In all cases, the variance must be the minimum necessary.

Impact of Increased Risk on Flood Insurance Rates

A variance is for floodplain management purposes only. It does not alter flood insurance purchase requirements or the mechanism for determining insurance costs. The increased risk for a non-compliant structure will be reflected in higher annual flood insurance premiums, which can be as high as \$25 for \$100 of insurance coverage. This may create severe financial consequences for the property owner who applied for the variance and for any future owners. Although a variance may save money in the short term, over the long run the owner may pay much more in insurance premiums or, if uninsured, in flood losses. If a variance is issued for a building with the lowest floor below the base flood elevation, the municipality must notify the applicant of the potentially high flood insurance premiums and the increased risks to life and property.

Additional Resources

- *Appeals, Special Uses and Variances, in Unit 7: Ordinance Administration of FEMA 480: National Flood Insurance Program (NFIP) Floodplain Management Requirements: A Study Guide and Desk Reference for Local Officials* (2005), available at <http://www.floods.org/index.asp?menuid=388&firstlevelmenuid=180&siteid=1>.
- *Wet Floodproofing Requirements for Structures Located in Special Flood Hazard Areas*, Technical Bulletin 7-93, FEMA FIA-TB-7 (1993), available at <http://www.fema.gov/library/viewRecord.do?id=1720>, specifies variance conditions and provides technical guidance for wet floodproofed buildings.

¹ *National Flood Insurance Program (NFIP) Floodplain Management Requirements*, FEMA 480 (2005), page 7-46.



FEMA

Variance

- [Definition/Description](#)
- [NFIP Requirement](#)
- **Guidance**
- [Related Keywords](#)
- [Special Topic Resources](#)
- [Supplemental Information for Variance](#)

Definition/Description

A grant of relief by a community from the terms of a floodplain management regulation. Because a variance can create an increased risk to life and property, variances from flood elevation or other requirements in the flood ordinance should be rare. Insurance premium rates are required by statute to be based on actuarial risk and will not be modified by the granting of a variance. Specific criteria for granting a variance is described in the supplemental information.

FEMA may review a community's findings justifying the granting of variances, and if that review indicates a pattern inconsistent with the objectives of sound floodplain management, FEMA may take appropriate action up to and including suspending the community from the National Flood Insurance Program (NFIP).

National Flood Insurance Program (NFIP) Requirement

- [59.1 - Definition](#)
- [60.6 - Variance Criteria](#)

Guidance

- **[IS-9 Managing Floodplain Development Through The National Flood Insurance Program \(NFIP\)](#)**

Related Keywords



FEMA

- [Historic Structure](#)

Special Topic Resources

- Functionally Dependent Use
 - [Managing Floodplain Development](#) (IS-9) 7-53
- Variance to allow Wet Floodproofing
 - [Wet Floodproofing Requirements](#) (FIA-TB-7) p. 3

Supplemental Information for Variance

FEMA does not set forth absolute criteria for granting variances since they are usually subject to State statutes and case law. However, FEMA will use the following general standards to evaluate variances issued by a community:

- (1) An applicant has good and sufficient cause for requesting a variance;
- (2) An applicant will suffer exceptional hardship should a variance be denied;
- (3) A variance will not cause increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances;
- (4) A variance is the minimum necessary, considering the flood hazard, to afford relief.











Functionally Dependent Uses 3/28/86 Proposed Rule, pp 10745-10746












Last Updated: 07/24/2014 - 16:00



Managing Floodplain Development Through the NFIP

Responsibility for flood loss reduction is shared by all units of government— local, state and federal— and the private sector. Fulfilling this responsibility depends on having the knowledge and skills to plan and implement needed floodplain management measures. The fundamental floodplain management program that most others are built on is the National Flood Insurance Program (NFIP).

	Size	Publication Date
 Appendix E	201.60K	
 Additional Regulatory Measures - Chapter / Section Number: Unit 6	644.01K	
 The NFIP Floodplain Management Requirements - Chapter / Section Number: Unit 5	1.71M	
 The National Flood Insurance Program - Chapter / Section Number: Unit 2	69.84K	
 Ordinance Administration - Chapter / Section Number: Unit 7	582.03K	
 NFIP Flood Studies and Maps - Chapter / Section Number: Unit 3	1.06M	
 Appendix D	38.44K	
 Flood Insurance and Floodplain Management - Chapter / Section Number: Unit 9	98.82K	
 Disaster Operations and Hazard Mitigation - Chapter / Section Number: Unit 10	420.85K	
 Appendix F	4.19K	

	FEMA	Size	Publication Date
	Appendix A	4.29K	
	Appendix C	11.54K	
	Floods and Floodplain Management - Chapter / Section Number: Unit 1	2.58M	
	Managing Floodplain Development Through the NFIP	1.01M	
	Managing Floodplain Development Through the NFIP	7.98M	
	Appendix G	2.28K	
	Orientation	230.96K	
	Table of Contents	20.21K	
	Substantial Improvement and Substantial Damage - Chapter / Section Number: Unit 8	598.02K	
	Using NFIP Studies and Maps - Chapter / Section Number: Unit 4	337.17K	

Resource Type: *Training / Course Material*

Last Updated: *March 5, 2007*

Managing Floodplain Development Through The National Flood Insurance Program

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F. APPEALS, SPECIAL USES AND VARIANCES

Generally, procedures for Appeals, special uses and variances are specified by state law. They require judgment calls involving several people, as ordinances typically do not allow only one person to decide these issues. Here is when they can occur and how they are usually handled.

Appeals

Ambiguous language or differing interpretations can lead the applicant and permit office to disagree. Your ordinance should have a process for referring these disagreements to a board of appeals or adjustment which will interpret the ordinance and settle the dispute.

Special uses

Some regulations require that certain situations be given a special review to determine if they should be allowed and, if so, whether conditions should be attached to the permit. While the NFIP sets construction standards for all buildings, your community may have decided that residences should not be allowed in a floodway and that nonresidential buildings should be allowed only if certain conditions are met. Some official body needs to determine if a special use permit or if a conditional permit should be issued.

Variances

Zoning ordinances, building codes and floodplain management regulations cannot be written to anticipate every imaginable situation. A process for issuing variances gives a builder a way to seek permission to vary from the letter of the rules because of a special situation.

A variance can mean that the minimum standards of the NFIP may not be met by a project due to a special local circumstance. Because of this, most of this section is devoted to variances.

Boards

In all three cases, the applicant submits a request to a knowledgeable board of arbiters. Typically, variances and special or conditional use permits are handled by the planning commission or other body that is responsible for writing and amending the ordinance. Appeals are usually handled by a separate board of appeals or board of adjustments. Sometimes all three processes are handled by the same body and sometimes, especially in smaller communities, that body is the city council or governing board.

These boards do not have authority to change the ordinance, just to apply or interpret the ordinance's provisions. They may or may not have authority to make a final decision. If not, they make recommendations to the governing board which makes the final decision.

VARIANCES

A variance is a grant of relief by a community from the terms of a land use, zoning or building code regulation. Because a variance can create an increased risk to life and property, variances from flood elevation or other requirements in the flood ordinance should be rare.

Granting variances is a local decision that must be based on not only NFIP criteria, but also on state law and other provisions the community may wish to require. Your community's review board must consider the fact that every newly constructed building adds to the local government's responsibilities and remains a part of the community for the indefinite future.

Variances are based on the general principal of zoning law that they pertain to a piece of property and are not personal in nature. Though standards vary from state to state, in general a variance is granted for a parcel with physical characteristics so unusual that complying with the ordinance would create an exceptional hardship to the applicant or surrounding property owners. Those characteristics must:

- ◆ Be unique to that property and not shared by adjacent parcels.
- ◆ Pertain to the land, not to any structure, its inhabitants or the property owners.

Characteristics that might justify a variance include an irregularly shaped lot, a parcel with unsuitable soils, or a parcel with an unusual geologic condition below ground level. It is difficult, however, to imagine any physical characteristic that would give rise to a hardship sufficient to justify issuing a variance to a flood elevation requirement.

Your community should grant variances based only on a structure-by-structure review. Never grant variances for multiple lots, phases of subdivisions or entire subdivisions.

NFIP requirements

NFIP regulations do not address appeals, special uses or conditional permits. Follow the procedures used in your zoning ordinance or building code as these are usually prescribed by state law.

Because variances may expose insurable property to a higher flood risk, NFIP regulations set guidelines for granting them. The guidelines, which are designed to screen out situations in which alternatives other than a variance are most appropriate, appear in 44 CFR 60.6(a). They are summarized in Figure 7-6.

A review board hearing a variance request must not only follow procedures given in the NFIP criteria, it must consider the NFIP criteria in making its decision. When the NFIP guidelines are followed, few situations qualify for a variance.

Good and sufficient cause. The applicant must show good and sufficient cause for a variance. Remember, the variance must pertain to the land, not its owners or residents. Here are some common complaints about floodplain rules that are NOT good and sufficient cause for a variance:

- ◆ The value of the property will drop somewhat.
- ◆ It will be inconvenient for the property owner.
- ◆ The owner doesn't have enough money to comply.
- ◆ The property will look different from others in the neighborhood.
- ◆ The owner started building without a permit and now it will cost a lot to bring the building into compliance

Hardship. The concept of unnecessary hardship is the cornerstone of all variance standards. Strict adherence to this concept across the country has limited the granting of variances.

The applicant has the burden of proving unnecessary hardship. Reasons for granting the variance must be substantial; the proof must be compelling. The claimed hardship must be exceptional, unusual and peculiar to the property involved. Financial hardship, inconvenience, aesthetic considerations, physical handicaps, personal preferences or the disapproval of one's neighbors do not qualify as exceptional hardships.

The local board must weigh the applicant's plea of hardship against the purpose of the ordinance. Given a request for a variance from floodplain elevation requirements, the board must decide whether the hardship the applicant claims outweighs the long-term risk to the owners and occupants of the building would face, as well as the community's need for strictly enforced regulations that protect its citizens from flood danger and damage.

When considering variances to flood protection ordinances, local boards continually face the difficult task of frequently having to deny requests from applicants whose personal circumstances evoke compassion, but whose hardships are simply not sufficient to justify deviation from community-wide flood damage prevention requirements.

1. Variances shall not be issued by a community within any designated regulatory floodway if any increase in flood levels during the base flood discharge would result;
2. Variances may be issued by a community for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, in conformance with the procedures of paragraphs (a) (3), (4), (5) and (6) of this section;
3. Variances shall only be issued by a community upon...
 - (i) a showing of good and sufficient cause,
 - (ii) a determination that failure to grant the variance would result in exceptional hardship to the applicant, and
 - (iii) a determination that the granting of a variance will not result in increased flood height, additional threat to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances;
4. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief;
5. A community shall notify the applicant in writing over the signature of a community official that...
 - (i) the issuance of a variance to construct a structure below the base flood level will result in increased premium rates for flood insurance up to amounts as high as \$25 for \$100 of insurance coverage and;
 - (ii) such construction below the base flood level increases risks to life and property. Such notification shall be maintained with a record of all variance actions as required in paragraph (a) (6) of this section.
6. A community shall...
 - (i) maintain a record of all variance actions, including justification for their issuance, and
 - (ii) report such variances issued in its annual or biennial report submitted to the [Federal Insurance] Administrator.
7. Variances may be issued by a community for new construction and substantial improvements and for other development necessary for the conduct of a functionally dependent use provided that...
 - (i) the criteria of paragraphs (a) (1) through (a) (4) of this section are met, and
 - (ii) the structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.

Figure 7-6: NFIP variance criteria (44 CFR 60.6(a))

These problems can be resolved through other means, even if the alternatives to a variance are more expensive or complicated than building with a variance, or if they require the property owner to put the parcel to a different use than originally intended, or to build elsewhere.

Here are two examples:

Example 1. A small undeveloped lot is surrounded by lots on which buildings have been constructed at grade. The ordinance requires new buildings to be constructed at a level several feet above grade.

If the owner were to build a new house, it would look different, Potential buyers would ask questions and find out about the flood problem in the area. If it were built on fill, the lot might drain onto the neighbors' property.

This situation probably would not warrant a variance because the owner does not face an exceptional hardship. Appearance is not a hardship and no action should be taken to hide the hazard from others. There are ways to elevate a building without creating a drainage problem, such as elevating the building on pilings or a crawlspace, or grading the fill to drain away from adjoining properties.

Example 2. A property owner seeks a variance because he or she would have to spend several thousand dollars to elevate a house to comply with the ordinance, and several thousand more to build a wheelchair ramp or an elevator to provide access for a handicapped member of the family.

While financial considerations are important to property owners and the needs of a handicapped person must be accommodated, these difficulties do not put this situation in the category of "exceptional hardships" because:

- ◆ The characteristics that result in the claimed hardship do not pertain to the property but are personal.
- ◆ A variance is not needed to provide day-to-day access to the building, which can be provided by building a ramp or elevator.
- ◆ Having a handicapped person occupy a floodprone dwelling raises a critical public safety concern.

If a variance is granted and the building is constructed at grade, the handicapped or infirm person must leave when floodwaters begin to rise, yet he or she may need help to do so. This poses an unnecessary danger to the handicapped person and places an extra demand on the community's emergency services personnel, who may be called upon to rescue the resident in the event of a flood.

On the other hand, if the building is properly elevated, the handicapped person either can be evacuated or can survive the flood simply by remaining at home safely above the floodwaters.

In effect, the variance would not relieve the property owner of his or her difficulty, but likely only postpone and perhaps ultimately increase it. It would not help the community, either, as the building will be susceptible to damage long after the current owners are gone.

It would be more prudent for both the owner and the community if the variance were denied and the home built at the proper elevation with handicapped access. This would ensure the safety

of all family members when floodwaters rise, as well as protect the property owner's and the community's investment in the property.

Public safety and expense. Flood damage prevention ordinances are intended to help protect the health, safety, well-being and property of the local citizens. Variances must not create threats to public safety or nuisances.

Because it would increase damage to other property owners, no variance may be issued within a regulatory floodway that will result in any increase in 100-year flood levels (44 CFR 60.6(a)(1)).

Fraud and victimization. Variances must not defraud or victimize the public. Any buildings permitted below the BFE face increased risk of damage from floods, and future owners of the property—and the community—are subject to all the costs, inconvenience, danger and suffering that those increased flood damages may bring.

Future owners may purchase the property, unaware that because of a variance, it is subject to potential flood damages and can be insured only at high rates.

Minimum variation necessary. A variance is a request to vary from the rules, not to ignore them. Any variance should allow only minimum deviation from the local requirements.

For example, even if an applicant can justify not elevating a building above the BFE, the review board should not automatically allow the building to be built at grade. The board should still require as much elevation as possible, to provide some flood protection without causing exceptional hardship.

In some instances it may be possible to vary individual provisions of the ordinance without reducing the overall level of protection. For example, a well-engineered building might be constructed in a V Zone on a foundation other than piles or columns.

In considering variances, the review board should use local technical staff expertise and recommendations from the building, planning, zoning or engineering departments. The local technical staff should consider varying other requirements in order to provide the needed flood protection. For example, it may be more appropriate to issue a variance to the front yard setback requirement in order to get the building out of the floodway.

Flood insurance rates. While a variance may allow deviation from building standards specified in a local ordinance, flood insurance rates and the flood insurance purchase requirement—which must be enforced by lending institutions—cannot be waived.

This can create severe financial consequences for a property owner, as insurance rates for a building built below BFE can be substantially higher than those for elevated buildings. A variance from elevation requirements—the most common kind of variance requested—increases the risk to a building, and that increased risk is reflected in higher annual insurance premiums (Figure 9-3).

If a variance is requested to construct a building below the BFE, you must notify the applicant (in writing) that granting the variance will result in increased flood insurance premium rates, up to \$25 per \$100 of coverage. In many instances, the variance-induced rates will be so high as to make the building essentially uninsurable because the owners cannot afford the premium. (In one case, a marine supply store on the Gulf Coast was built 14 feet below BFE in a V zone. The annual flood insurance premium was \$25,000—on a \$100,000 building.)

The original owner who applied for a variance may not care, but if approved, the variance's impact may matter a great deal to subsequent potential owners who cannot afford the property's high insurance rates. The result may be owner abandonment; your community could be left with a vacant, flood-damaged and essentially uninsurable building.

Figures 7-7 through 7-12 illustrate the premiums for a single-family home protected to different levels. They provide a clear picture of the cost of actuarial post-FIRM flood insurance rates and, therefore, the true risk to which the building is being exposed.

You should give these two pages of illustrations to anyone considering seeking a variance to save construction costs. A variance may save money in the short term, but over the long run, the owner will pay much more in insurance premiums or, if uninsured, in flood losses.

Note: These premiums are for the purposes of this example. Insurance rates vary, based on location, date of construction and lowest floor elevation, and must be computed case-by-case. The premiums shown for the next series of illustrations were computed based on \$100,000 in building coverage.



Figure 7-7. Pre-FIRM building—1995 insurance rate: \$595

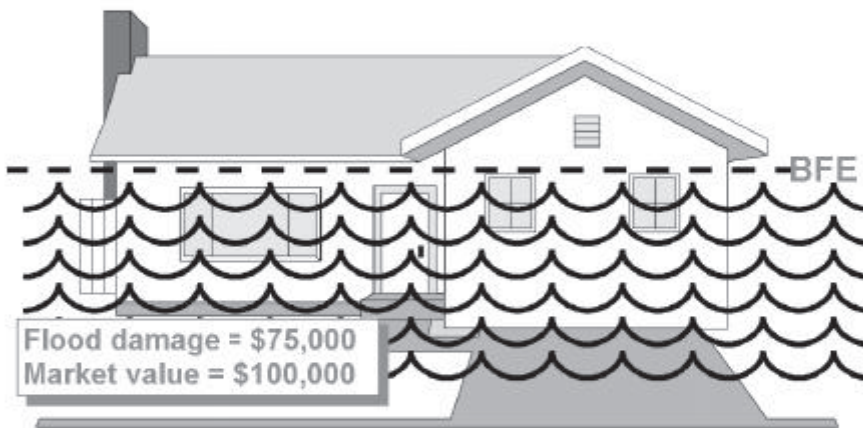
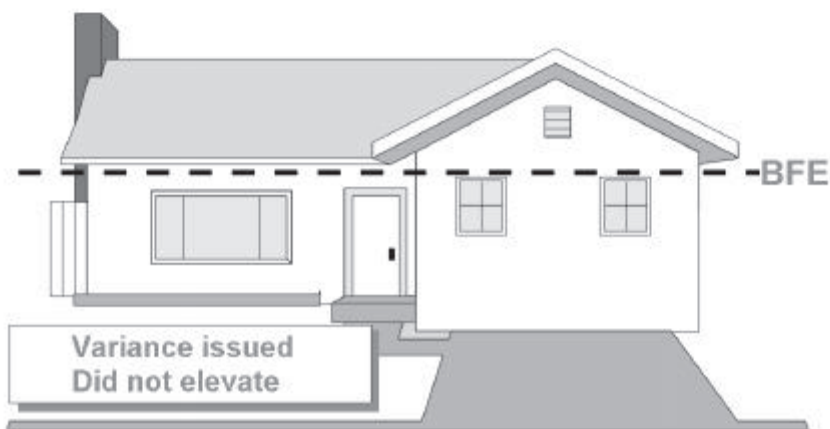


Figure 7-8. Pre-FIRM building—substantially damaged by 1997 flood



**Figure 7-9. Repaired—variance allowed
With no elevation (7 feet below BFE); actuarial rate: \$3,090**

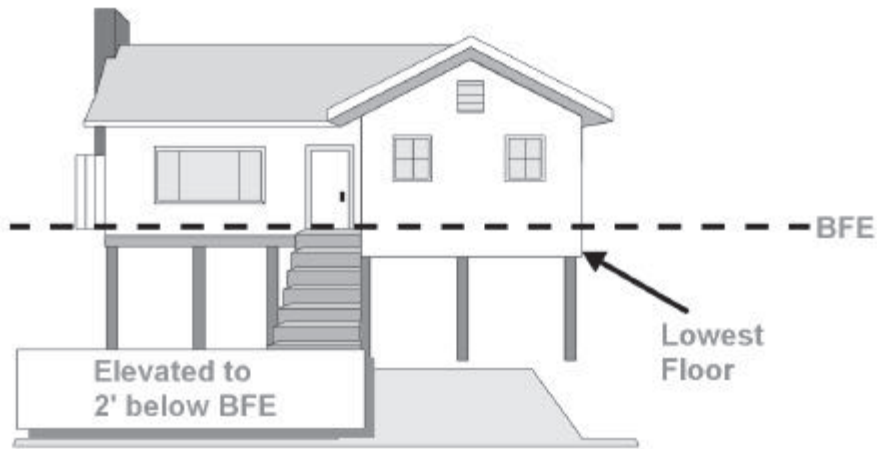


Figure 7-10. Repaired—variance allowed
 Elevated to 2' below BFE; actuarial rate: \$1,140

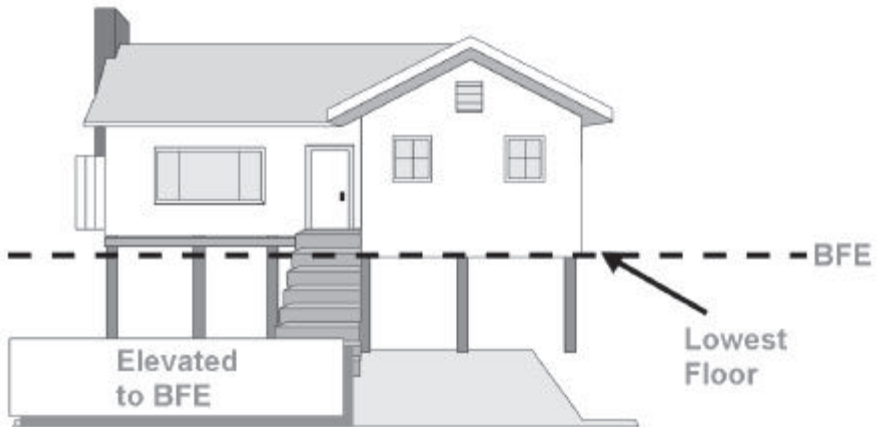


Figure 7-11. Repaired—elevated to BFE; actuarial rate: \$351



Figure 7-12. Repaired—elevated 2 feet above BFE; actuarial rate: \$216

APPENDIX E:

NFIP REGULATIONS

This Appendix contains the text of the Code of Federal Regulations (CFR) for the National Flood Insurance Program: 44 CFR Parts 59, 60, 65, and 70.

TITLE 44--EMERGENCY MANAGEMENT AND ASSISTANCE

CHAPTER I--FEDERAL EMERGENCY MANAGEMENT AGENCY, DEPARTMENT OF HOMELAND SECURITY

PART 59--GENERAL PROVISIONS – Table of Contents

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Sec.

59.21 Purpose of subpart.

59.22 Prerequisites for the sale of flood insurance.

59.23 Priorities for the sale of flood insurance under the regular program.

59.24 Suspension of community eligibility.

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127 of Mar. 31, 1979, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

Subpart A--General

§ 59.1 Definitions.

As used in this subchapter—

“Act” means the statutes authorizing the National Flood Insurance Program that are incorporated in 42 U.S.C. 4001-4128.

“Actuarial rates”--see “risk premium rates”.

“Administrator” means the Federal Insurance Administrator.

“Agency” means the Federal Emergency Management Agency, Washington DC.

“Alluvial fan flooding” means flooding occurring on the surface of an alluvial fan or similar landform which originates at the apex and is characterized by high-velocity flows; active processes of erosion, sediment transport, and deposition; and, unpredictable flow paths. “Apex” means a point on an alluvial fan or similar landform below which the flow path of the major stream that formed the fan becomes unpredictable and alluvial fan flooding can occur.

“Applicant” means a community which indicates a desire to participate in the Program.

“Appurtenant structure” means a structure which is on the same parcel of property as the principal structure to be insured and the use of which is incidental to the use of the principal structure.

“Area of future-conditions flood hazard” means the land area that would be inundated by the 1percent-annual-chance (100-year) flood based on future-conditions hydrology.

“Area of shallow flooding” means a designated AO, AH, AR/AO, AR/AH, or VO zone on a community's Flood Insurance Rate Map (FIRM) with a 1 percent or greater annual chance of flooding to an average depth of 1 to 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-related erosion hazard” is the land within a community which is most likely to be subject to severe flood-related erosion losses. The area may be designated as Zone E on the Flood Hazard Boundary Map (FHBM). After the detailed evaluation of the special flood-related erosion hazard area in preparation for publication of the FIRM, Zone E may be further refined.

§ 59.24 Suspension of community eligibility.

(a) A community eligible for the sale of flood insurance shall be subject to suspension from the Program for failing to submit copies of adequate flood plain management regulations meeting the minimum requirements of paragraphs (b), (c), (d), (e) or (f) of § 60.3 or paragraph (b) of §§ 60.4 or 60.5, within six months from the date the Federal Insurance Administrator provides the data upon which the flood plain regulations for the applicable paragraph shall be based. Where there has not been any submission by the community, the Federal Insurance Administrator shall notify the community that 90 days remain in the six month period in order to submit adequate flood plain management regulations. Where there has been an inadequate submission, the Federal Insurance Administrator shall notify the community of the specific deficiencies in its submitted flood plain management regulations and inform the community of the amount of time remaining within the six month period. If, subsequently, copies of adequate flood plain management regulations are not received by the Administrator, no later than 30 days before the expiration of the original six month period the Federal Insurance Administrator shall provide written notice to the community and to the state and assure publication in the FEDERAL REGISTER under part 64 of this subchapter of the community's loss of eligibility for the sale of flood insurance, such suspension to become effective upon the expiration of the six month period. Should the community remedy the defect and the Federal Insurance Administrator receive copies of adequate flood plain management regulations within the notice period, the suspension notice

shall be rescinded by the Federal Insurance Administrator. If the Federal Insurance Administrator receives notice from the State that it has enacted adequate flood plain management regulations for the community within the notice period, the suspension notice shall be rescinded by the Federal Insurance Administrator. The community's eligibility shall remain terminated after suspension until copies of adequate flood plain management regulations have been received and approved by the Federal Insurance Administrator.

(b) A community eligible for the sale of flood insurance which fails to adequately enforce flood plain management regulations meeting the minimum requirements set forth in §§ 60.3, 60.4 and/or 60.5 shall be subject to probation. Probation shall represent formal notification to the community that the Federal Insurance Administrator regards the community's flood plain management program as not compliant with NFIP criteria. Prior to imposing probation, the Federal Insurance Administrator (1) shall inform the community upon 90 days prior written notice of the impending probation and of the specific program deficiencies and violations relative to the failure to enforce, (2) shall, at least 60 days before probation is to begin, issue a press release to local media explaining the reasons for and the effects of probation, and (3) shall, at least 90 days before probation is to begin, advise all policyholders in the community of the impending probation and the additional premium that will be charged, as provided in this paragraph, on policies sold or renewed during the period of probation. During this 90-day period the community shall have the opportunity to avoid probation by demonstrating

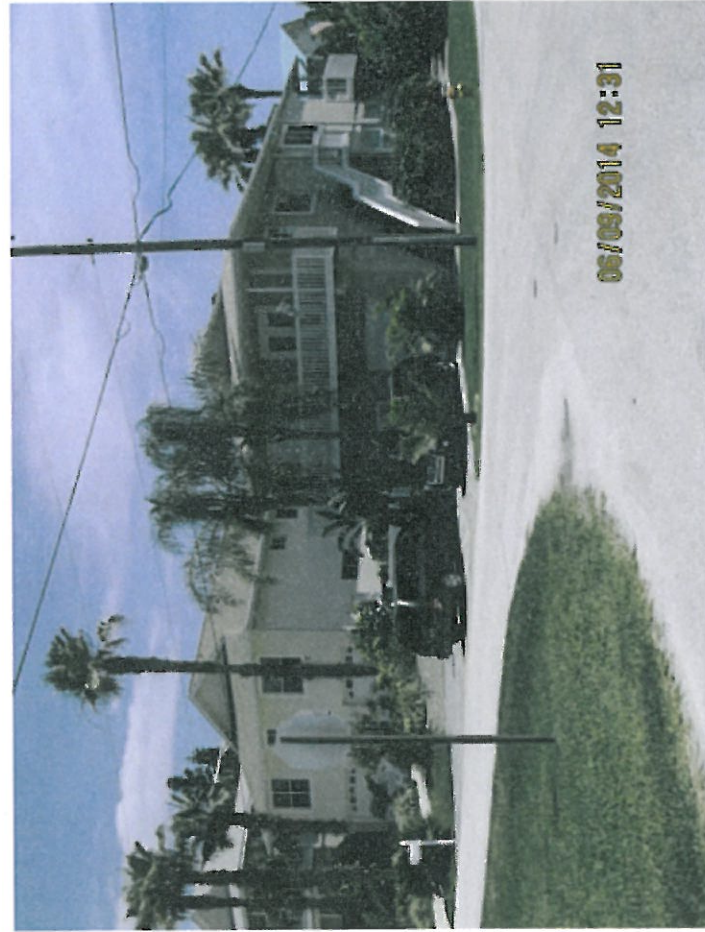
compliance with Program requirements, or by correcting Program deficiencies and remedying all violations to the maximum extent possible. If, at the end of the 90-day period, the Federal Insurance Administrator determines that the community has failed to do so, the probation shall go into effect. Probation may be continued for up to one year after the community corrects all Program deficiencies and remedies all violations to the maximum extent possible. Flood insurance may be sold or renewed in the community while it is on probation. Where a policy covers property located in a community placed on probation on or after October 1, 1986, but prior to October 1, 1992, an additional premium of \$25.00 shall be charged on each such policy newly issued or renewed during the one-year period beginning on the date the community is placed on probation and during any successive one-year periods that begin prior to October 1, 1992. Where a community's probation begins on or after October 1, 1992, the additional premium described in the preceding sentence shall be \$50.00, which shall also be charged during any successive one-year periods during which the community remains on probation for any part thereof. This \$50.00 additional premium shall further be charged during any successive one-year periods that begin on or after October 1, 1992, where the preceding one-year probation period began prior to October 1, 1992.

(c) A community eligible for the sale of flood insurance which fails to adequately enforce its flood plain management regulations meeting the minimum requirements set forth in §§ 60.3, 60.4 and/or 60.5 and does not correct its Program deficiencies and remedy all

violations to the maximum extent possible in accordance with compliance deadlines established during a period of probation shall be subject to suspension of its Program eligibility. Under such circumstances, the Federal Insurance Administrator shall grant the community 30 days in which to show cause why it should not be suspended. The Federal Insurance Administrator may conduct a hearing, written or oral, before commencing suspensive action. If a community is to be suspended, the Federal Insurance Administrator shall inform it upon 30 days prior written notice and upon publication in the FEDERAL REGISTER under part 64 of this subchapter of its loss of eligibility for the sale of flood insurance. In the event of impending suspension, the Federal Insurance Administrator shall issue a press release to the local media explaining the reasons and effects of the suspension. The community's eligibility shall only be reinstated by the Federal Insurance Administrator upon his receipt of a local legislative or executive measure reaffirming the community's formal intent to adequately enforce the flood plain management requirements of this subpart, together with evidence of action taken by the community to correct Program deficiencies and remedy to the maximum extent possible those violations which caused the suspension. In certain cases, the Federal Insurance Administrator, in order to evaluate the community's performance under the terms of its submission, may withhold reinstatement for a period not to exceed one year from the date of his receipt of the satisfactory submission or place the community on probation as provided for in paragraph (b) of this section.

LAND DEVELOPMENT
ACTIVITY
NOV 13 2014
RECEIVED

Liebovitz, Barry & Melissa
6299 Engram Rd, New Smyrna Beach



Photos: Tom Reynolds on 6/9/2014

LAND DEVELOPMENT
ACTIVITY
NOV 13 2014
RECEIVED

Liebovitz, Barry & Melissa
6299 Engram Rd, New Smyrna Beach



Photos: Tom Reynolds on 6/9/2014

From: Larry LaHue
To: Thomson, John
Date: 11/20/2014 1:08 PM
Subject: 6299 Engram Rd NSB

** Proprietary **

Good afternoon John:

I received a copy of the variance application for 6299 Engram Road New Smyrna Beach. I do not recommend approval of the variance request.

Approval would violate Division 7, Section 72-749 (b)(3) of our Flood Hazard Management ordinance. "Elevated buildings. New construction and substantial improvements of elevated buildings that include fully enclosed areas formed by foundation and other exterior walls below the lowest floor elevation shall be designed to preclude finished living space and designed to allow for the entry and exit of floodwaters to automatically equalize hydrostatic flood forces on exterior walls."

Additionally, as a participant in the Community Rating System, approving this variance may jeopardize our current class rating of 5, which provides a 25% flood insurance premium discount to residents in the Special Flood Hazard Area - a cumulative savings of \$860,000 annually. The CRS program specifically states that granting variances to a jurisdiction's flood ordinance is prohibited.

Thanks for the opportunity to review this.

Larry

Laurence H. LaHue, CEM, FPEM, CFM

Volusia County Emergency Management
3825 Tiger Bay Road
Daytona Beach, FL 32124

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Mobile 386.212.1976
email: llahue@volusia.org
www.volusia.org/emergency

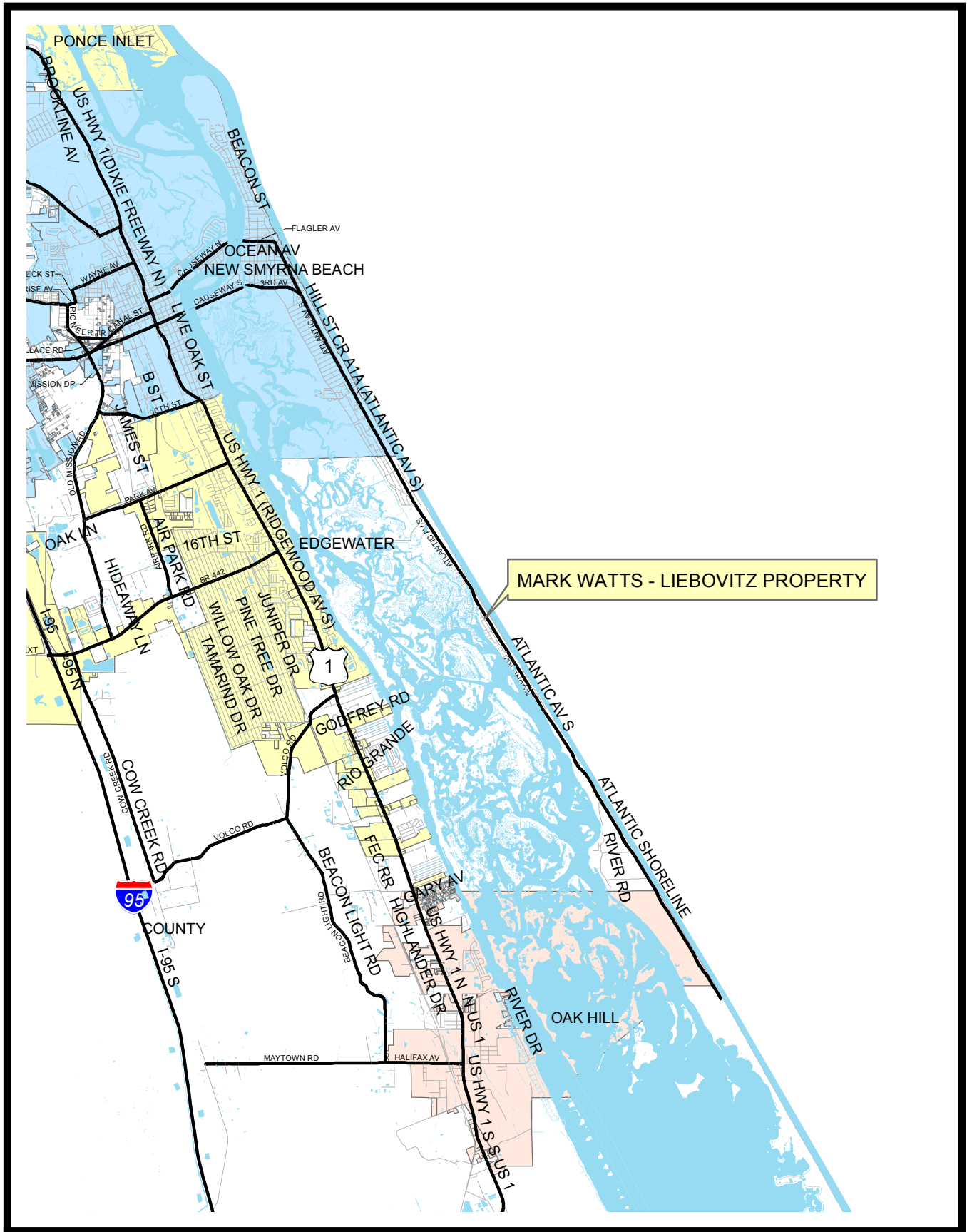
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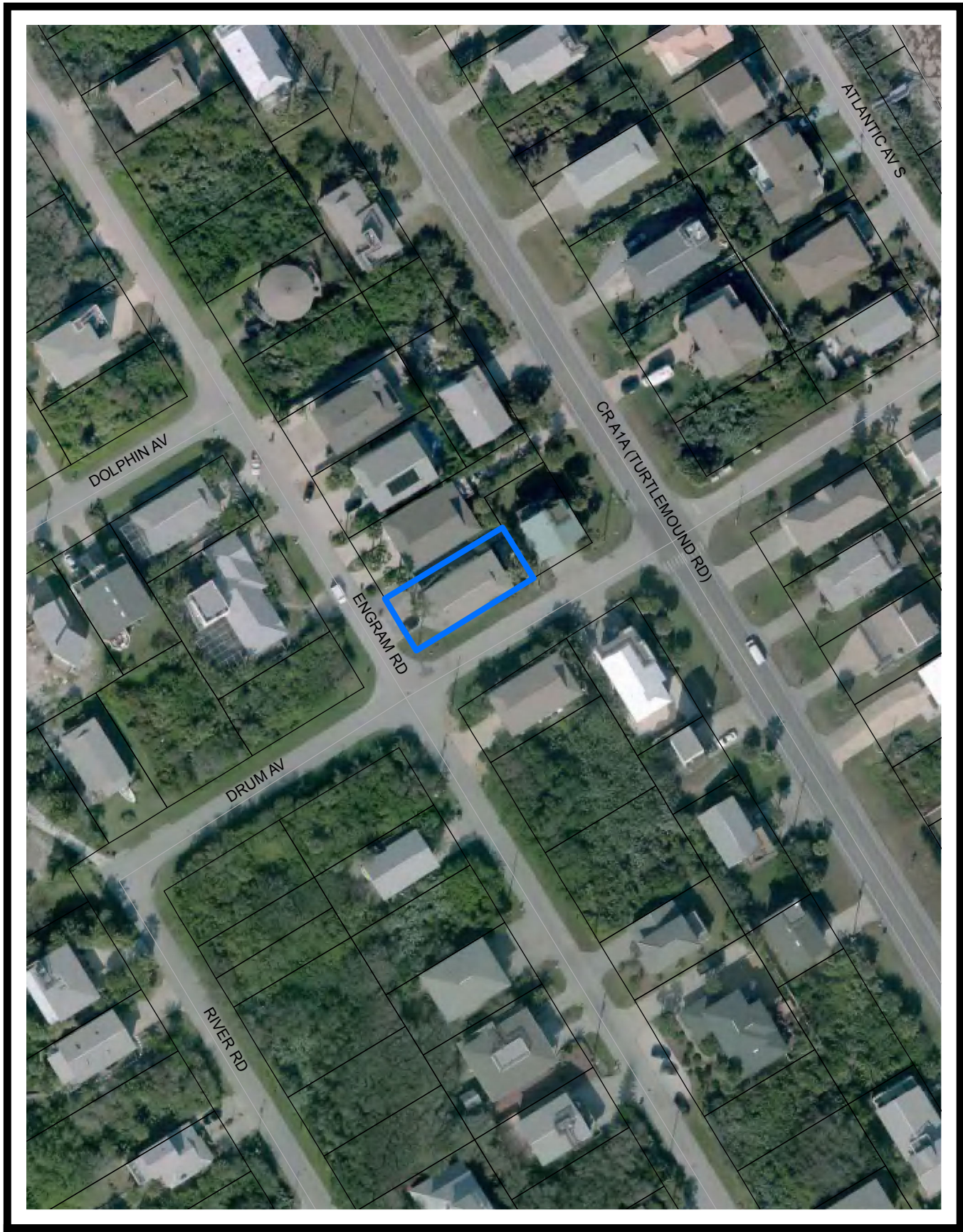
(<https://twitter.com/#VCEmergencyInfo>)



MARK WATTS - LIEBOVITZ PROPERTY
 2015-P-FHM-0019



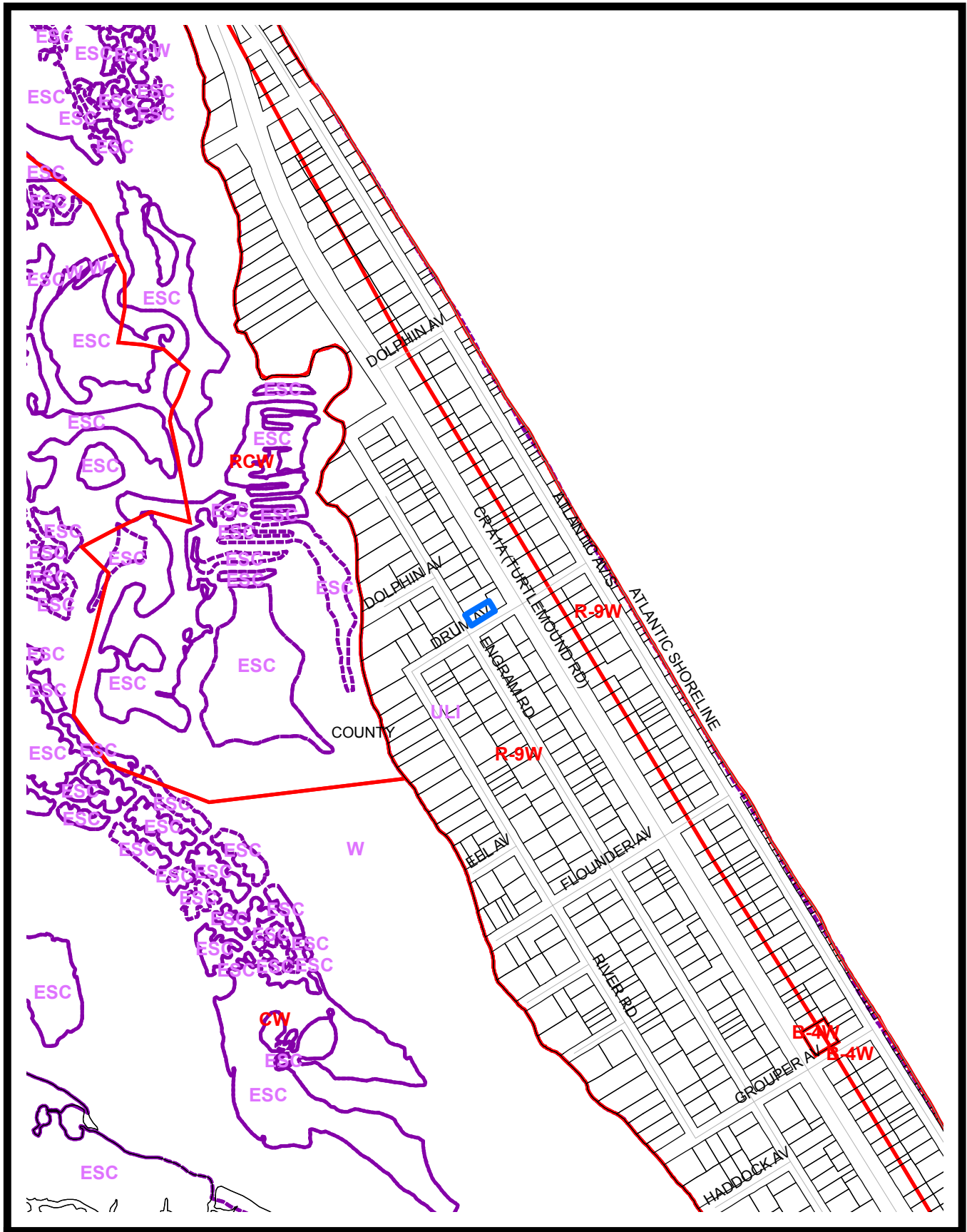
1 inch = 2 miles



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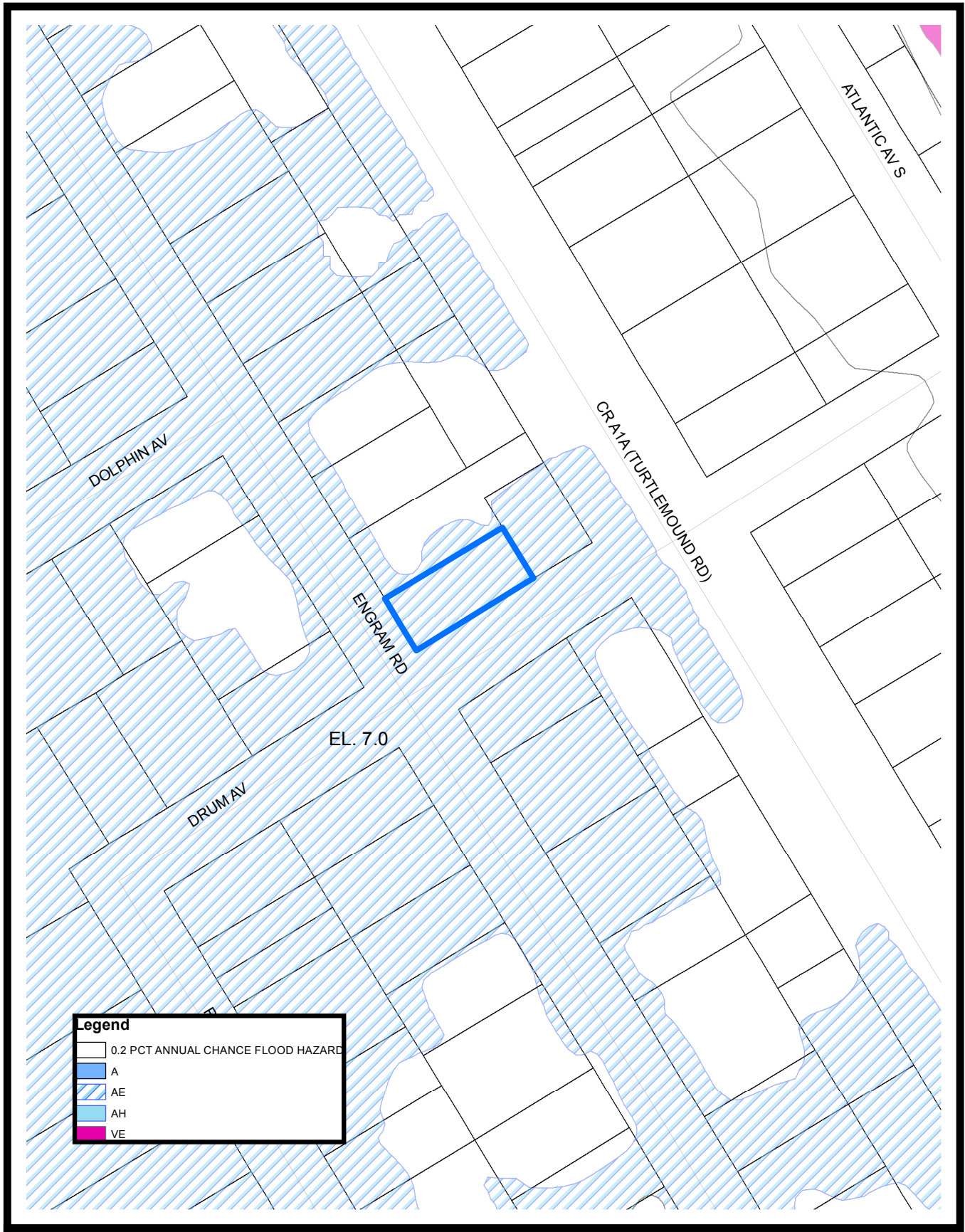
1 inch = 100 feet



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1 inch = 500 feet



Legend	
	0.2 PCT ANNUAL CHANCE FLOOD HAZARD
	A
	AE
	AH
	VE

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