

**ORDINANCE NO. 010-2012**

**AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS AMENDING MONROE COUNTY CODE CHAPTER 122 FLOODPLAIN REGULATIONS, CLARIFYING AND DELETING CERTAIN PROVISIONS; CREATING SECTION 122-7 FLOODPLAIN CERTIFICATE OF COMPLIANCE PROGRAM; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR TRANSMITTAL TO THE STATE LAND PLANNING AGENCY AND THE SECRETARY OF STATE; PROVIDING FOR CODIFICATION; PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, Monroe County (County) seeks to protect potential public and private loss due to flooding; and

**WHEREAS**, it is the intent of the County to maintain eligibility in the National Flood Insurance Program (NFIP); and

**WHEREAS**, to maintain eligibility and to protect the health, safety, and welfare of the citizens of the County, no structure or manufactured home hereafter shall be located, extended, converted or structurally altered without full compliance with the terms of this chapter in addition to other applicable regulations of this chapter; and

**WHEREAS**, in addition to regulating new construction of structures, the County has three primary floodplain compliance programs to assure illegal post-FIRM structures or illegal uses, constructed below base flood elevation are remedied:

1. Pilot Inspection Program for continuance of flood insurance required by FEMA
2. Inspection upon request for a building permit
3. Inspection upon sale; and

**WHEREAS**, these three programs were ratified in Resolution 152-2003 by the Monroe County Board of County Commissioners (BOCC) dated April 16, 2003, as a remedial plan required by the Federal Emergency Management Agency (FEMA) in order for Monroe County to remain in the NFIP; and

**WHEREAS**, the remedial plan was implemented by ordinance and codified in the Monroe County Code of Ordinances (MCC); and

**WHEREAS**, Chapter 2011-82 Laws of Florida, effective July 1, 2012, prohibits any County from requiring an inspection of other areas which are not the subject of a building permit, which prevents inspection by the County of downstairs enclosures upon application for a building permit if the work does not affect the downstairs enclosure; and

**WHEREAS**, MCC Sec. 6-107, adopted as part of the remedial plan, provides for inspections of downstairs enclosures if a building permit was requested (“inspection upon permit”) for any part of a structure and provided for Code Enforcement action if violations of the floodplain regulations were found; and

**WHEREAS**, this process will not be available to the County as of July 1, 2012; and

**WHEREAS**, County communicated to FEMA upon adoption of Chapter 2011-82 Laws of Florida, whereby FEMA requested the County create a “replacement program” to assure illegal structures and illegal uses below base flood are made compliant; and

**WHEREAS**, the County finds that it is in the interest of the public safety, health and welfare that the County remain in the National Flood Insurance Program to protect the property of the County’s citizens, infrastructure, and financing of construction and sales of real property; and

**WHEREAS**, a new Certificate of Compliance Program was proposed to FEMA, in writing as demonstrated in “Exhibit A” and FEMA concurred with the creation of a Certificate of Compliance Program in writing as demonstrated in “Exhibit B” and County adopted Resolution 440-2011 “Exhibit C” which FEMA has indicated is acceptable as an alternative to “inspection upon permit” in the existing MCC provisions; and

**WHEREAS**, further minor amendments to the Floodplain regulations are being proposed to clarify, refine, or update the regulations as follows:

1. New definitions of illegal structures and uses
2. New definition of non-conforming structures
3. Refined definition of limited storage
4. Refined definition of market value
5. Refined definition of substantial damage
6. Refined definition of substantial improvement
7. Clarification of date County implemented maximum size of downstairs enclosure to be 299 square feet (4/12/04)
8. Clarified how vented garage doors work
9. Clarified accessory structure storage items and eliminated value of accessory structure.
10. Clarified variance procedures
11. Clarified purpose, process, and penalty for inspection of residential structure upon real estate “saleby:
  - a. Requiring any illegal structures, uses, or improvement to be revealed prior to a new buyer taking title;

- b. Clarifying when inspection is due and that the sole purpose (based on Resolution 440-2011) of the inspection is to provide information for recording and monitoring improvements to downstairs enclosures subject to the county floodplain ordinance;
- c. Clarifying seller only will be prosecuted for not obtaining an inspection to disclose illegal or nonconforming conditions associated with the NFIP, a federal program;
- d. Eliminating holding up a building permit, waiting on an inspection of an enclosure (HB407); and

**WHEREAS**, further amendments were requested by FEMA which were presented to the Board of County Commissioners; and

**WHEREAS**, a public hearing was held by the Planning Commission, which recommended approval on March 28, 2012:

**NOW, THEREFORE, BE IT ORDAINED BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS:**

**Section 1.** Chapter 122 – Floodplain Management of the Monroe County Code is amended as follows:

**Sec. 122-1. – Purpose and intent.**

(a) It is the purpose of the floodplain management provisions to promote the public health, safety and general welfare and to minimize public and private losses due to flood conditions in specific areas by provisions designed to:

- (1) Restrict or prohibit uses which are dangerous to health, safety and property due to water or erosion hazards, or which results in increase in erosion or in flood heights or velocities;
- (2) Require that uses vulnerable to floods, including facilities that serve such uses, be protected against flood damage at the time of initial construction;
- (3) Control the alteration of natural floodplains, stream channels, and natural protective barriers that are involved in the accommodation of floodwaters;
- (4) Control fillings, grading, dredging and other development that may increase erosion of flood damage;
- (5) Prevent or regulate the construction of flood barriers which will unnaturally divert floodwaters or which may increase flood hazards to other lands;
- (6) To minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;

- (7) To minimize prolonged business interruptions;
  - (8) To minimize damage to public facilities and utilities such as water and gas mains, electric telephone and sewer lines, and streets and bridges located in floodplains;
  - (9) To help maintain a stable tax base by providing for the sound use and development of flood-prone areas in such manner as to minimize future flood blight areas; and
  - (10) To ensure that potential home buyers are notified that the property is in a floodplain area.
- (b) The Board of County Commissioners deems it in the best interest of its citizens that prudent measures be taken to minimize the potential public and private loss due to flooding. It is the intent of the Board of County Commissioners that the county at all times be eligible for, and receive, the benefit of participation in the National Flood Insurance Program. It is therefore the intent of the board that the provisions of the chapter be strictly adhered to in all areas of special flood hazard within the jurisdiction of the unincorporated areas of the county.

**Sec, 122-2. – General provisions.**

- (a) Applicability. Except as provided for the elevated portion of a nonconforming residential structure by section 122-4(a) (10), no structure or manufactured home hereafter shall be located, extended, converted or structurally altered without full compliance with the terms of this chapter in addition to other applicable regulations of this chapter.
- (b) Adoption of maps. The areas of special flood hazard identified by the Federal Emergency Management Agency (FEMA) in its October 17, 1989 Flood Insurance Study and Wave Height Analysis for Monroe County, Florida, Unincorporated Areas, as amended February 18, 2005 with the most current official maps approved by FEMA, with accompanying supporting data, and any revisions thereof, are adopted by reference and declared to be a part of this chapter, and shall be kept on file, available to the public, in the offices of the county Building Department. Letter of Map Amendments, Letter of Map Revisions, Letter of Map Revision Based on Fill, and Conditional Letter of Map Revisions approved by FEMA are acceptable for implementation of this regulation.
- (c) Rules for interpreting flood hazard issues. The boundaries of the flood hazard areas shown on the official flood insurance rate maps may be determined by scaling distances. Required interpretations of those maps for precise locations of such boundaries shall be made by the floodplain administrator, in consultation with the building official. In interpreting other provisions of this chapter, the building official shall be guided by the current edition of FEMA's 44 CFR, and FEMA's interpretive letters, policy statements and technical bulletins as adopted by resolution from time to time by the Board of County Commissioners. Additionally, the building official shall also obtain, review and reasonably use any base flood elevation and floodway data available from a federal, state or other source, as criteria for requiring that new construction, substantial improvements, and other developments meet the criteria required in the appropriate flood zone.

### **Sec. 122-3. -- Permit requirements.**

(a) The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Alteration* means any change or modification in construction type, materials, or occupancy.

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

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

*Development* means any manmade 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.

*Elevated building* means a nonbasement building that has its lowest elevated floor raised above ground level by foundation walls, shear walls, posts, piers, pilings, or columns.

*Enclosure* means that portion of an elevated building below the lowest elevated floor that is either partially or fully shut in by rigid walls and used solely for limited storage, parking or entryways. Enclosures shall not be constructed, equipped or used for habitational purposes.

*Existing construction* means structures for which the start of construction commenced before the effective date of the floodplain management regulations adopted by the community January 1, 1974. Existing construction is also known as pre-FIRM structures. These regulations adopted by the county January 1, 1974 are based on the original maps published by the Federal government June 15, 1973.

*Existing manufactured home park* means a manufactured home park or subdivision for which the construction of facilities for servicing the lots, the construction of the streets, and either final site grading or the pouring of concrete pads is completed before the effective date of the floodplain management regulations adopted by the community January 1, 1975, and in which, at the time of application, there are no site built residences or the park or subdivision is limited to manufactured home by this chapter.

*Finishing materials* means anything beyond basic wall construction pursuant to the most recent FEMA Technical Bulletin, which is normally associated with habitable space. Finishing materials include, but are not limited to, ceiling mold, trim, baseboards, decorative finish work, wainscoting, and textured woods.

*Historic Structure* means any structure that is:

- (a) Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
- (b) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
- (c) Individually listed on 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 County 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.

*Illegal Structure or Use* means a structure or use that is not a legal structure or legal use as defined in this chapter.

*Legal Structure* means a structure that was permitted by the floodplain regulation in effect at the time construction commenced on the structure in its current configuration and received a permit or final inspection or certificate of occupancy for the structure in its current configuration.

*Legal Use* means a use that was permitted by the floodplain regulations at the time the use commenced on the property.

*Limited storage* that which is incidental and accessory to the principal use of the structure. For example, if the structure is a residence, storage should be limited to items such as lawn and garden equipment, tires, and other low damage items which will not suffer flood damage or can be conveniently moved to the elevated part of the building. Flood insurance coverage for enclosures below the Base Flood Elevation (BFE) is very limited.

*Lowest Floor* means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor; provided, that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this chapter.

*Manufactured home* means a structure, transportable in one or more sections, which is built on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities. The term also includes park trailer, travel trailers, and similar transportable structures placed on a site for 180 consecutive days or longer and intended to be improved property.

*Market value* means the county property appraiser's value of the structure plus 20 percent. A uniform appraisal report for determination of market value submitted by the applicant may be used if the county building official considers such appraisal consistent with local construction costs. Where appraisal is not accepted because it appears to be inconsistent with local construction costs



an applicant may request review by an independent third party appraiser duly authorized by the county. The cost of independent review shall be borne by the applicant. The reviewing appraiser shall determine if the appraisal value reasonably reflects an appropriate value of the structure. The independent appraiser's determination shall be in writing. Professionals preparing appraisal shall be required to possess certifications as state certified residential appraisers for appraising one to four family residential properties and state certified general appraisers for all other properties including commercial and multi-residential.

*New construction* means those structures for which the start of construction commenced on or after the effective date of the floodplain management regulation adopted by the community that is January 1, 1975. New construction is also known as post-FIRM structures. These regulations adopted by the county January 1, 1974 are based on the original maps published by the Federal government June 15, 1973.

*Nonconforming structure* means a below base flood elevation structure or a portion thereof, which was lawfully existing or permitted, and is not fully compliant with the terms of this chapter. A nonconforming structure shall remain subject to the terms of this chapter.

*Nonconforming structure means a structure for which the lowest floor is located below base flood elevation*, which was lawfully existing or permitted and is not fully compliant with the terms of this chapter. A nonconforming structure shall remain subject to the provisions of this chapter.

*Pure manufactured home park* means a manufactured home park that at the time of application has no site-built residences or a park or subdivision which is limited to manufactured homes only by this chapter.

*Recreational vehicle* means a vehicle that is:

- (1) Built on a single chassis;
- (2) Four hundred square feet or less when measured at the largest horizontal projection;
- (3) Designed to be self-propelled or permanently towable by a light duty truck; and
- (4) Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel or seasonal use.

*Start of construction* means (for other than new construction or substantial improvements under the Coastal Barrier Resources Act) the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement or other improvement was within 180 days of the permit date. For substantial improvements the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building whether or not the alteration affects the external dimensions of the building.

*Substantial damage* means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred. All structures that are determined to be substantially damaged are automatically considered to be substantial improvements, regardless of the actual repair work performed. If the cost necessary to fully repair the structure to its before damage condition is equal to or greater than 50% of the structure's market value before damages, then the structure must be elevated (or flood proofed if it is non-residential) to or above the Base Flood Elevation (BFE), and meet other applicable NFIP requirements. Items that should not be counted toward the cost to repair include plans, specifications, survey costs, permit fees, and other items which are separate from or incidental to the repair. Items that should not be counted also includes demolition or emergency repairs and improvements to items outside the building, such as the driveway, septic systems, wells, fencing, landscaping and detached structures.

The cost of repairs required to remedy health, safety, and sanitary code deficiencies can be deducted from the overall cost of an improvement, but only if:

1. an appropriate regulatory official such as a building official, fire marshal, or health officer was informed about and knows the extent of the code related deficiencies, and
2. the deficiency was in existence prior to the damage event or improvement and will not be triggered solely by the fact that the structure is being improved or repaired.

In addition, for any repair required to meet health, sanitary, and safety codes, only the minimum necessary to assure safe living conditions should be deducted, including those improvements required by Chapter 11, 2012 Florida Accessibility Code. Costs of repairs that are in excess of the minimum necessary for continued occupancy or use will be counted toward the cost of the overall improvement.

*Substantial improvement* means any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 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:

1. Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local building official and which are the minimum necessary to assure safe living conditions or
2. Any alterations of a "historic structure," provided that the alteration will not preclude the structure's continued designation as a "historic structure."

Floodplain management requirements for new construction apply to substantial improvements.

Supplemental Information for Substantial Improvement



The basic types of improvements are rehabilitations or reconstructions that do not increase square footage, and lateral or vertical additions that do increase square footage.

Rehabilitation or reconstruction would be a partial or complete "gutting" and replacement of internal workings and may or may not include structural changes. If this action is substantial, i.e., over 50 percent of the structure's market value, it is considered new construction, and the entire building must be elevated to or above the Base Flood Elevation (BFE) (or floodproofed if the building is non-residential).

For a lateral addition, if the substantial improvement is to add a room or rooms outside the footprint of the existing building, only the addition is required to be elevated to or above the BFE, i.e.; the existing building does not have to be elevated. Vertical additions would require that the entire structure be elevated to or above the BFE. Even though the improvement itself is entirely above the BFE, it is dependent on the walls and foundation of the existing building for structural support.

(b) Except for work specifically exempted under chapter 6, the building official shall require building permits for all proposed construction or other improvements within areas of special flood hazard. In addition to the standard requirements for a building permit, an application for a building permit for construction or improvements within areas of special flood hazard shall contain the information and certifications set forth in a form provided by the Building Official.

(c) All building foundations shall rest directly on natural rock, on concrete piling driven to rock or on friction piling (concrete or wood) and shall be anchored to such rock support by holes, 16 inches in minimum diameter, augured into such rock a minimum depth of three feet and reinforced by a minimum of four #5 vertical rods extending up into the piers above a minimum of 18 inches and tied to the vertical steel of the pier. Wooden pilings shall be locked into 16-inch auger foundations by at least a #5 rebar extending through the piling and three to five inches beyond.

(d) The permit holder shall provide a floor elevation after the lowest floor is completed or, in instances where the structure is subject to the regulations applicable to coastal high-hazard areas, after placement of the lowest horizontal structural members of the lowest floor. Floodproofing certification for nonresidential structures in A-Zones shall be provided prior to a certificate of occupancy or prior to final inspection.

(e) Within 21 calendar days of establishment of the lowest floor elevation, or upon placement of the lowest horizontal structural members of the lowest floor, whichever is applicable, it shall be the duty of the permit holder to submit to the building official a certification of the elevation of the lowest floor within A zones or the lowest portion of the lowest horizontal structural members of the lowest floor within V zones, whichever is applicable, as built in relation to mean sea level. Such certification shall be prepared by or under the direct supervision of a registered land surveyor or professional engineer and certified by the same. When floodproofing is used for a building within A zones, the certification shall be prepared by or under the direct supervision of a professional engineer or architect and certified by same. Any work done within the 21-day period and prior to submission of the certification shall be at the permit holder's risk. The building official shall review the floor elevation survey data submitted. Deficiencies detected by such review shall be corrected by the permit holder immediately and prior to further progressive work being permitted to proceed.

Failure to submit the survey or failure to make the corrections required hereby shall be causes to issue a stop-work order for the project.

(f) The degree of flood protection required in this chapter is 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 manmade or natural causes. This chapter does not imply that land outside the areas of special flood hazard or uses permitted within such areas will be free from flooding or flood damages. This chapter shall not create liability on the part of the county or any officer or employee thereof for any flood damages that result from reliance on this chapter or any administrative decision lawfully made thereunder.

**Sec. 122-4. - Standards for issuance of building permits in areas of special flood hazard.**

(a) Generally. No building permit for proposed construction or development activity within an area of special flood hazard shall be granted, by the Building Official or the Floodplain Administrator, unless the proposed new construction is in compliance with the standards set forth in this chapter. In all areas of special flood hazard, the following standards apply:

- (1) All new construction and substantial improvements shall be adequately anchored by pilings or columns to prevent flotation, collapse and lateral movement of the structure.
- (2) All applications deemed substantial or nonsubstantial must be approved by the floodplain administrator, or the building official/director.
- (3) All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.
- (4) All new construction and substantial improvements shall be constructed by methods and practices that minimize flood damage.
- (5) All new or replacement water supply systems shall be designed and constructed by methods and practices that minimize flood damage.
- (6) All new or replacement sanitary sewage systems shall be designed and constructed to minimize or eliminate infiltration of floodwaters into the system and discharge from the system into floodwaters. Joints between sewer drain components shall be sealed with caulking, plastic or rubber gaskets, and all manhole covers shall be sealed in a similar manner.
- (7) On-site waste disposal systems shall be located and constructed to minimize or eliminate damage to them and contamination from them during flooding.
- (8) Any alteration, repair, reconstruction or improvement to a structure that already is in compliance with the provisions of this chapter shall meet the requirements of new construction as contained in this chapter.

- (9) Illegal or nonconforming uses, structures, and construction below elevated post-FIRM buildings shall not be expanded or improved or repaired from damages of any origin and no building permit shall be issued for any improvements to below base flood enclosures, other than for demolition or a permit to remedy a life safety hazard, unless the structure is brought into compliance with this chapter.
- (10) The elevated portion of any nonconforming structure may be extended, expanded, or structurally altered upon meeting the following conditions:
  - a. If the structure is located within an A or V zone, and the improvement is not substantial as defined in this Chapter.
  - b. If the structure is located within a V-zone, prior to the issuance of a building permit, the permit applicant shall submit a professional engineer's or registered architect's sealed certification that the improvements to the nonconforming structure do not subject the elevated portion of the structure to increased flood risk or structural damage.
- (11) No manmade alteration of sand dunes, dune ridge, mangrove stands or wetlands shall be allowed which would increase potential flood damage.
- (12) All new construction shall be located landward of the reach of mean high tides.
- (13) All agreements for deed, purchase agreements, leases, or other contracts for sale or exchange of lots within areas of special flood hazard shall carry the following flood hazard warning prominently displayed on the document:

**FLOOD HAZARD WARNING**

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| <p>This property may be subject to flooding. You should contact the county growth management division and obtain the latest information regarding flood elevations and restrictions on development before making use of this property.</p> |

(b) Additional standards. In all areas of special flood hazard where base flood elevation data has been provided the following provisions are required:

(1) Residential construction.

- a. New construction and substantial improvement of any residential structure shall have the lowest floor for zones A1-30, AE and AH or bottom of the lowest supporting member of the lowest floor for zones V1-30, VE or V elevated at or above the base flood elevation level.

b. Electrical and mechanical equipment servicing an elevated structure must be elevated at or above the required base flood elevation. Elevators may be placed below the base flood elevation, if the mechanical and electrical equipment serving the elevator is designed, certified and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

c. Sewer and storm drainage systems, which extend below the base flood elevation, shall be provided with automatic backflow prevention valves or devices installed at the point where the line passes an exterior wall or slab.

d. Except as noted in subsection (b)(7) of this section, the space below the lowest floor of an elevated structure shall be used exclusively for parking of vehicles, elevators, limited storage or building access purposes. Such spaces may be enclosed under the following conditions:

1. Only a maximum of 299 square feet of the space shall be enclosed with opaque materials. Any remaining portion of an enclosed area of more than 299 square feet shall only be enclosed with screen or open lattice. This limitation shall not apply to parking of aircraft beneath residential buildings abutting airport districts. Nonconforming areas of 300 square feet or more, enclosed with opaque materials, existing on April 12, 2004, the effective date of the ordinance from which this section is derived shall be deemed conforming as to the provisions of this subsection 122-4 (b)(1)d.1.; however, such enclosures shall not be expanded or substantially improved unless they are brought into compliance with this chapter.

2. The walls of any enclosed area below the base flood elevation in zones AE, on the community FIRM shall be provided with openings such as vents, louvers or automatic valves which permit the level of floodwaters within the enclosed area to match the rising and falling of floodwaters on the outside of the structure. A minimum of two openings located on separate walls shall be provided having a minimum total net area of one square inch for each square foot of enclosed area, where the enclosed area is calculated by outside dimensions. A vented garage door may be used in lieu of venting one wall opening. Openings shall be situated such that the bottom of each opening is no higher than one foot above finished grade.

3. Interior walls, ceilings and floor, below base flood elevation, in enclosures may be finished with allowable exterior finish, regardless of whether this is specified in the permit or not, in accordance with the most recent FEMA Technical Bulletin. The most recent Technical Bulletin limits the finish to basic wall ceiling and floor construction. This is meant to exclude the use of materials and finishes normally associated with living areas constructed above base flood elevation from those areas of the enclosure located below the base flood elevation.

4. The interior portion of an enclosed area below an elevated building may not be partitioned except that garages may be separated from storage and entryway. In the event an existing enclosure is enlarged, the walls between the existing enclosure and the additional enclosure must be deleted. Enclosed areas below an elevated building and laterally attached enclosed areas below base flood elevation must be void of utilities that would service the enclosure and cannot be temperature controlled.

5. Necessary electrical switches for required lighting circuits may be located below the base flood elevation, provided they are of the outdoor water-resistant variety on a separate ground-fault interrupt circuit breaker and do not exceed the minimum number required by law. Except for one GFI, electrical receptacles shall not be located below the base flood elevation.

6. Walls constructed entirely of open lattice work or screen mesh shall be considered as satisfying the requirements of subsections 122-4 (b)(1)d.2., and 122-4 (b)(4). of this section.

7. The area enclosed below the base flood elevation shall not be used for human habitation.

98. Except as noted in subsections 122-4 (b) (1) b. and (b)(1)d.5. of this section or required by an applicable code no electrical, mechanical or plumbing may be located below the base flood elevation.

## (2) Nonresidential construction.

a. New construction and substantial improvements of any commercial, industrial or other nonresidential structures within zone AE on the community's flood insurance rate map (FIRM) shall have the lowest floor (including basement) elevated to or above the base flood level or, together with attendant utility and sanitary facilities, be designed so that below the base flood level the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. Elevating above base flood elevation may decrease the cost of flood insurance. Where a nonresidential structure is intended to be made watertight below the base flood level, a registered professional engineer or architect shall develop and/or review structural design specifications and plans for the construction and shall certify that the design and methods of construction are in accordance with accepted standards of practice for meeting the applicable provisions contained herein. A record of such floodproofing certification which shall include the specific elevation (in relation to mean sea level) to which such structures are floodproofed shall be provided to the building department. Wet floodproofing is not acceptable. New construction or cumulative substantial improvements of any commercial, industrial or other nonresidential structures within zones V1-30, VE or V shall have the bottom of the lowest horizontal structural member of the lowest floor, elevated to or above the base flood elevation.

b. Enclosed areas below an elevated structure at grade elevation for nonresidential, commercial or industrial uses shall be permitted for limited storage or parking purposes, provided that they are anchored to prevent flotation, collapse or lateral movement of the structure and do not exceed 300 square feet of enclosed area and are in accordance with the requirements of subsection 122-4 (b)(5)g. of this section for V zones or subsections 122-4 (b)(1)d.1—(b)(1)d.8. of this section for A zones. Plans for such structure shall be submitted to the building official for approval prior to construction.

(3) Accessory structures.

a. Residential accessory structures.

1. Any prefabricated light metal structure, which meets the following criteria, may be permitted in an A or V zones if:

- (i) The enclosed area is 150 square feet or less;
- (ii) The use is limited to limited storage; and
- (iii) The structure is properly anchored to prevent flotation, collapse, and lateral movement.

2. Accessory light metal structures which exceed the 150 square feet of enclosed space threshold or concrete or wood accessory structures built on site regardless of size or value may be permitted if they meet all of the criteria outlined in subsection 122-4 (b)(1)d within A zones or the criteria set forth in section (b)(5)g within V zones.

b. Nonresidential accessory structures.

1. All nonresidential accessory structures, or enclosed areas, which meet the following criteria, may be permitted if:

- (i) The enclosed area is 300 square feet or less;
- (ii) The use is restricted to limited storage and parking only;
- (iii) They meet the breakaway wall standards outlined in subsection 122-4 (b) (5) (a) within V zones or the venting requirements outlined in section 122-4 (b) (1) (d)(2) within A zones;
- (iv) They meet the other requirements as outlined in subsection (b)(1)d. of this section; and
- (v) The structures are properly anchored to prevent flotation, collapse and lateral movement.

2. Accessory structures in an A zone that exceed the 300 square feet of enclosed space threshold may be permitted if they meet the floodproofing criteria outlined in subsection



(b)(2)a. of this section. Accessory structures in a V zone that exceed the 300 square feet of enclosed space threshold are strictly prohibited.

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(5) Coastal high-hazard areas (V zones). Within the areas of special flood hazard are areas designated as coastal high-hazard areas, which have special flood hazards associated with wave wash. The following provisions shall apply in these areas:

- a. New construction or substantial improvements within zones V1-30, VE or V shall be elevated so that the bottom of the lowest horizontal structural member of the lowest floor (excluding pilings or columns) is located at or above the base flood elevation level, with the space below the lowest horizontal structural member open or constructed with breakaway walls so as not to impede the flow of floodwaters. Breakaway walls may be permitted for aesthetic purposes only and must be designed to wash away in the event of abnormal wave action and in accordance with the provisions of sections 122-4 (b)(5)g., (b)(5)h. and (b)(5)i.
- b. New construction or substantial improvements shall be securely anchored on pilings or columns.
- c. The pile or column foundation and structure attached thereto is anchored to resist flotation, collapse, and lateral movement due to the effects of wind and water loads acting simultaneously on all building components. Water loading values used shall be those associated with the base flood. Wind loading values shall be those required by American Society of Civil Engineers (ASCE) Standard number 7.
- d. A registered professional engineer or architect shall develop or review the structural design, specifications and plans for the construction, and shall certify that the design and methods of construction to be used are in accordance with the accepted standards of practice for meeting the provisions of sections 122-4 (b) (5)a., (b)(5)b. and (b)(5)c.
- e. There shall be no fill used as structural support.
- f. Nonstructural fill shall not be placed in a V zone except with an approved Coastal Model meeting the minimum NFIP standards, that demonstrates such fill will not increase potential flood damage by wave ramping and/or deflection.
- g. If any space below the base flood elevation level is to be enclosed, such enclosed areas shall not be used for human habitation and must meet the provisions of sections 122-4 (b)(1)d.1., (b)(1)d.3.—(b)(1)d.8. and (b)(5)a. of this section.
- h. Prior to construction, plans for any structure that will have enclosed space below the base flood elevation level shall be submitted to the building official or his designee for approval.
- i. Walls and partitions shall be allowed below the base flood elevation, provided they are not part of the structural support of the building and are designed to break away under the impact of abnormally high tides or wind-driven water without damage to the structural

integrity of the building on which they are to be used, and provided that a design load limit of not less than ten and no more than 20 pounds per square foot shall be used as the safe load design for breakaway walls.

- j. Compliance with the provisions contained in section 122-4 (b)(5)i. of this section shall be certified by a registered professional engineer or architect.
- k. Any alteration, repair, reconstruction or improvement to a structure shall not enclose the space below the base flood elevation level except as provided for in sections 122-4 (b)(5)g. and (b) (5) i. of this section.
- l. No manmade alteration of mangroves or beach berm system shall be permitted which will increase the potential for flood damage.

(6) Basement construction. No basement shall be constructed in the county.

(7) Enclosures below base flood elevation. No enclosure below the base flood elevation shall be constructed or equipped for such uses as a kitchen, dining room, family room, recreation room, office, bedroom, bathroom or workshop. This prohibition does not apply to new improvements that are not substantial to post FIRM structures rendered noncompliant by amendments to the flood insurance rate map as long as the improvement is at the same elevation the structure was originally built to; ground level structures whose initial construction began prior to January 1, 1975; and those structures that are listed on the National Register of Historic Places, the Florida Inventory of Historic Places or any inventory of local historic places.

(8) Below base flood elevation variance. In no event shall a below base flood elevation variance be necessary for improvements to an existing structure whose initial construction began prior to December 31, 1974, or to a legally placed manufactured home when the improvements are not substantial.

(9) Recreational vehicles. Require that recreational vehicles placed on sites within zones A1-30, AH, and AE, V-130, V and VE on the community's FIRM either:

- a. Be on the site for fewer than 180 consecutive days and be fully licensed and ready for highway use; or
- b. Meet the permit requirements of section 122-4 (b)(4). A recreational vehicle is ready for highway use if it is on its wheels or internal jacking system, designed to be self-propelled or permanently towable by a light duty truck, is attached to the site only by quick disconnect type utilities and security devices, and has no permanent attached additions.

#### **Sec. 122-5. - Variances to the floodplain management requirements.**

- (a) Generally. Where, owing to special conditions, a literal enforcement of the floodplain management provisions of this chapter would result in exceptional hardship unique to that property or proposed project, the board of county commissioners may grant variances from the terms of those provisions as will not be contrary to the public interest, will be in harmony with

the general purpose and intent of this chapter, and will be the minimum variance that will allow reasonable use of the property.

(b) Procedures.

(1) An application for a variance from the provisions of this chapter for development in an area of special flood hazard shall be filed with the building department at the time of application for a building permit.

(2) Within ten days of receipt of a complete application for a variance from the terms of the floodplain management provisions of this chapter, the building official shall review the application, and submit a report and recommendation to the Board of County Commissioners.

(3) The Board of County Commissioners shall review the application and the reports and recommendations of the building official and consider granting the variance in accordance with the conditions set forth in this section 122-5 (c).

(c) Conditions.

(1) Variances shall be issued only upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief, and only upon all of the following conditions:

- a. A showing of good and sufficient cause;
- b. A determination that failure to grant the variance would result in exceptional hardship to the applicant;
- c. A determination that the granting of a variance will not result in increased flood heights; result in additional threats to public safety; result in extraordinary public expense; create nuisance; cause fraud on or victimization of the public; or conflict with other provisions of this chapter or this Code; and
- d. Specific written findings linked to the factors below.

(2) The following factors shall be relevant in the granting of a variance:

- a. Physical characteristics of construction;
- b. Whether it is possible to use the property by a conforming method of construction;
- c. The possibility that materials may be swept onto other lands to the injury of others;
- d. The danger to life and property due to flooding or erosion damage;
- e. The susceptibility of the proposed facility and its contents to flood damage and the effects of such damage on the individual owner;
- f. The importance to the community of the services provided by the proposed facility;

- g. The necessity to the facility of a water-dependent location, where applicable;
  - h. The availability of alternate locations less subject to flooding;
  - i. The compatibility of the proposed use with existing and anticipated development;
  - j. The relationship of the proposed use to the comprehensive plan, land development regulations and the floodplain management program for that area;
  - k. The safety of access to the property for ordinary and emergency vehicles in times of flood;
  - l. The expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site; and
  - m. 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.
- (3) When the board of county commissioners considers the propriety of granting a variance as permitted by this chapter, the following factors shall not be considered relevant:
- a. The physical disabilities or handicaps and health of the applicant or members of his family;
  - b. The domestic difficulties of the applicant or members of his family;
  - c. The financial difficulty of the applicant in complying with the floodplain management provisions of this chapter; or
  - d. The elevation of surrounding structures.
- (4) Any applicant to whom a variance is granted shall be given written notice by the board of county commissioners specifying the difference between the base flood elevation and the elevation to which the structure is to be built and stating that the cost of flood insurance will be commensurate with the increased risk resulting from the lowest floor being located below the base flood elevation.
- (5) All variances issued shall require that an owners affidavit be prepared, and recorded with the clerk of the circuit court, which shows that the proposed construction will be located in a special flood hazard area, the number of feet that the lowest floor of the proposed structure will be below the base flood level, and that actuarial flood insurance rates increase as the lowest floor within A zone and the bottom of the lowest horizontal structural member of the lowest floor within V zones elevation decreases.
- (6) The building official shall maintain records of all variance actions and annually report any variances to the Federal Emergency Management Agency.

**Sec. 122-6. - Required inspections of residential structures.**

(a) Applicability. Prior to the transfer of ownership of any property occupied by an elevated residential structure with a below base flood enclosed area defined as "new construction" (i.e., construction commenced on or after January 1, 1975) under this chapter, a county approved inspection of the below base flood enclosure shall be conducted. The required inspection shall be conducted no earlier than 180 days prior to the transfer of the property by the seller or the potential purchaser, with the sellers permission. The intent of this inspection, which is strictly limited to the below base flood enclosure, is to identify for county records and purchasers any nonconformities or illegal structures or uses.

(b) Inspections. The inspection required under this section may be conducted either by an inspector from the growth management division or by an inspector approved by the growth management division. Fees for inspections conducted by the growth management division shall be in accordance with the schedule established by resolution of the board of county commissioners for inspections conducted under the county's flood insurance inspection and compliance program.

(c) Inspection procedures and forms. All inspections required under this section shall be conducted in accordance with procedures and recorded on county forms approved by the growth management director.

(d) Private inspectors' approval. Non-county inspectors from an approved list maintained by the growth management division may be retained by property owners to complete the inspections required by this section. These inspectors shall be approved by the growth management division director and shall be required to take an inspection training session conducted by the growth management division to ensure all inspectors fully understand county inspection and reporting requirements. All inspections conducted and inspection reports prepared by non-county inspectors are subject to review by the growth management division. Inspection reports that are found to be incomplete, inaccurate, or contain errors and omissions, may result in the inspector being removed from the approved list of inspectors by the growth management director.

(e) Inspection submittal requirements. The original of the inspection report, signed by the county inspector or county approved inspector, shall be submitted to the buyer and Building Department ten days prior to the closing date for transfer of property.

(f) Failure to comply with inspection submittal requirements. Should the inspection report required by this section not be filed with the Building Department and buyer, the seller and buyer will be notified that the structure is in violation of this section. The buyer and his successors and assigns may enforce the terms of this section in law or at equity. The plaintiff may seek injunctive relief in a court of competent jurisdiction to prevent a violation of this section. Attorney's fees and costs incurred in an action to enforce these regulations may be awarded to a substantially prevailing party at the discretion of the court. A plaintiff may seek and the court may award treble damages to an aggrieved party. The sole intent of this inspection is to provide information for recording and monitoring improvements to downstairs enclosures subject to the county's floodplain regulations and in accordance with Board of County Commission Resolution 440-2011, which does not require that the property be brought into compliance prior or subsequently to

transfer. This inspection is not intended to be used to identify or prosecute any other unpermitted improvements that are not subject to the floodplain regulations.

(g) Nothing in this section shall prohibit the county from prosecuting illegal, unpermitted improvements under the Pilot Inspection Program (44CFR 59.30); however the Pilot Inspection Program requires an independent inspection. .

(h) If the results of the inspection identify illegal unpermitted improvements Section 122-4 applies when a building permit or special floodplain permit is sought by an applicant.

**Section 2.** The Monroe County Code is amended by adding Section 122-7 as follows:

**Sec. 122-7. Floodplain Certificate of Compliance Program.**

(a) Generally. Any property owner who has obtained an inspection of his downstairs enclosure or structure below base flood elevation through either:

- a. FEMA Insurance Inspection Program; or
- b. Inspection at time of sale; or
- c. Voluntary Inspection

is eligible to obtain a Certificate of Compliance. The structure must have been found in compliance with the Monroe County floodplain regulations by Monroe County staff. Prior to obtaining the certificate, the owner must record a non-conversion agreement in the Monroe County official land records on a form to be provided by the County. Properties that have received their inspections prior to implementation of the Certificate of Compliance program may receive a certificate of compliance; however, a re-inspection (with no fee) is necessary to assure compliance has been maintained and the owner must also record the non-conversion agreement, which shall be recorded in the official land records of Monroe County.

(b) Outreach. The County will mail written notices to property owners, every two years, with downstairs living areas as follows:

- a. The County will obtain data from the Monroe County Property Appraiser Office which will identify all single family residences which contain enclosures that are identified as living area on the ground floor. Once this data is captured, technical staff will deduct all the parcels that have already received inspections through the FEMA Insurance Inspection Pilot Program, transfer of ownership program, or the previously applicable inspection on building permit program, and been made compliant.
- b. The remaining property owners will be notified by regular mail that in order to receive a certificate of compliance, an inspection is required of any below



base flood elevation structures, to verify compliance with the Monroe County floodplain regulations. Owners will also be notified that non-compliant structures may be subject to code compliance proceedings.

- c. If owners seek and obtain a certificate of compliance inspection, and are compliant, they will receive a Certificate of Compliance as outlined in this Section. This is a proactive opportunity for property owners to receive evidence that they have a compliant structure which should, long term, create a positive market condition. If an owner has a non-compliant structure, he will be notified of all the required corrections to the enclosure to become compliant and that permits are required to authorize construction,
- (c) Inspections. Inspections may be conducted for a Certificate of Compliance according to this chapter for FEMA Insurance Inspection Program or for Inspection of Residential Structures prior to transfer of ownership found in Section 122-6.
- (d) Compliant Structures, The County will provide a Certificate of Compliance to property owners with compliant structures after property owners sign and record a non-conversion agreement (with a corresponding drawing demonstrating the permitted improvements allowed below base flood elevation attached to the agreement). The non-conversion agreement shall be recorded by the county in the Monroe County official land records so future buyers of properties understand what has been approved for areas below base flood elevation. Property owners shall pay recording fees.
- (e) Non-Compliant Structures. The County Building Official shall refer any non-compliant structures to the Code Compliance Department for enforcement through appropriate processes.
- (f) New Construction. New construction that contains any type of below base flood elevation enclosure, will be required to record a "Notice of Non-Conversion" in the Monroe County land records indicating the square footage permitted to be constructed below base flood elevations, with a corresponding drawing demonstrating the permitted improvements permitted, prior to receiving a certificate of occupancy.

### **Section 3.** Severability.

If any section, paragraph, subdivision, clause, sentence or provision of this Ordinance shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, invalidate, or nullify the remainder of this Ordinance, but the effect thereof shall be

confined to the section, paragraph, subdivision, clause, sentence or provision immediately involved in the controversy in which such judgment or decree shall be rendered.

**Section 4.** Conflicting Provisions.

In the case of direct conflict between any provision of this ordinance and a portion or provision of any appropriate federal, state or county law, rule, code or regulation, the more restrictive shall apply.

**Section 5.** Filing, Transmittal, and Effective Date.

This ordinance shall be filed in the Office of the Secretary of State of the State of Florida, and transmitted to the State Land Planning Agency, but shall not become effective until a notice is issued by the State Land Planning Agency or Administration Commission approving the ordinance pursuant to Chapter 380, Florida Statutes and appeal periods have run.

**Section 6.** Codification

The provisions of this ordinance shall be included and incorporated into the Code of Ordinances of the County of Monroe, Florida, as an addition or amendment thereto and shall be appropriately numbered to conform to the uniform numbering system of the Code.

**PASSED AND ADOPTED** by the Board of County Commissioners of Monroe County, Florida at a regular meeting held on the 16<sup>th</sup> day of May, 2012.

Mayor David Rice  
Mayor Pro tem Kim Wigington  
Commissioner Heather Carruthers  
Commissioner George Neugent  
Commissioner Sylvia Murphy

yes  
yes  
yes  
yes  
yes

ATTEST:  
DANNY L. KOLHAGE, CLERK

MONROE COUNTY BOARD OF  
COUNTY COMMISSIONERS

By: Sabel C. DeSantis  
Deputy Clerk

By: [Signature]  
Mayor David Rice

*Approved as to form -  
Susan M. Grimsley,  
Asst. County Attorney  
5-16-2012*