

ORDINANCE NO. 00-09-07

**ORDINANCE OF THE CITY OF MARATHON, FLORIDA, AMENDING SECTION 9.5-4 OF THE CITY CODE TO ADD ADDITIONAL DEFINITIONS; REPEALING EXISTING SECTIONS 9.5-125 THROUGH 9.5-127, AND SECTIONS 9.5-315 THROUGH 9.5-324 OF THE CITY CODE PERTAINING TO FLOODPLAIN MANAGEMENT STANDARDS AND ADOPTING NEW FLOODPLAIN MANAGEMENT STANDARDS AS SET FORTH HEREIN; PROVIDING FOR APPROVAL BY THE STATE DEPARTMENT OF COMMUNITY AFFAIRS; PROVIDING FOR SEVERABILITY AND REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR INCLUSION IN THE CODE; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the Legislature of the State of Florida has in Chapter 166, Florida Statutes, delegated the responsibility to local governmental units to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry.

**WHEREAS**, the flood hazard areas of the City of Marathon (the "City") are subject to periodic inundation which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety and general welfare.

**WHEREAS**, these flood losses are caused by the occupancy in flood hazard areas of uses vulnerable to floods, which are inadequately elevated, flood-proofed, or otherwise unprotected from flood damages.

**WHEREAS**, it is in the best interest of the City to participate in the National Flood Insurance Program so that its residents will be eligible to purchase flood insurance.

**WHEREAS**, the City must adopt a flood damage prevention ordinance in order to participate in the National Flood Insurance Program.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, AS FOLLOWS:**<sup>1</sup>

Section 1.     Recitals. The above recitals and true and correct and incorporated herein by this reference.

Section 2.     Definitions. Section 9.5-4 of the City Code is hereby amended to include the following definitions:

"Accessory structure (appurtenant structure)" means a structure that is located on the same parcel of property as the principal structure and the use of which is incidental to the use of the principal structure. Accessory structures should constitute a minimal initial investment, may not be used for human habitation, and be designed to have minimal flood damage potential. Examples of accessory structures are detached garages, carports, storage sheds, pole barns, and hay sheds.

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

"Area of shallow flooding" means a designated AO or VO Zone on the applicable Flood Insurance Rate Maps (FIRM) for the City with base flood depths from one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and indeterminate, and where velocity flow may be evident.

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

"Existing Construction" Any structure for which the "start of construction" commenced before the effective date of this Ordinance.

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<sup>1</sup> Additions to existing text are shown by underline; deletions are shown by ~~strikethrough~~

"Existing manufactured home park or subdivision" means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of this Ordinance.

"Expansion to an existing manufactured home park or subdivision" means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed [including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

"Floodplain" means any land area susceptible to flooding.

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

"Functionally dependent facility" means a facility, which cannot be used for its intended purpose unless it is located or carried out in close proximity to water, such as a docking, or port facility necessary for the loading and unloading of cargo or passengers, shipbuilding, or ship repair. The term does not include long-term storage, manufacture, sales, or service facilities.

"Historic Structure" means any structure that is;

- a. Listed individually in the National Register of Historic Places 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 United States 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. Designated by the State of Florida as an archaeological, historical or cultural landmark; or

- d. Designated by either Monroe County or the City as an archeological, historical or cultural landmark.

"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 trailers, travel trailers, and similar transportable structures placed on a site for 180 consecutive days or longer and intended to be improved property.

"Map" means the Flood Insurance Rate Map (FIRM) for the City, issued by the Federal Insurance Administration having an effective date of March 3, 1997, as may be amended.

"New construction" means any structure for which the "start of construction" commenced after the effective date of this Ordinance. The term also includes any subsequent improvements to such structure.

"New manufactured home park or subdivision" means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of this Ordinance,

"Primary frontal dune" means a continuous or nearly continuous mound or ridge of sand with relatively steep seaward and landward slopes immediately landward and adjacent to the beach and subject to erosion and overtopping from high tides and waves during major coastal storms. The inland limit of the primary frontal dune occurs at the point where there is a distinct change from a relatively steep slope to a relatively mild slope.

"Program" means the National Flood Insurance Program authorized by the National Flood Insurance Act of 1968, as may be amended.

"Reference feature" is the receding edge of a bluff or eroding frontal dune, or if such a feature is not present, the normal high-water line or the seaward line of permanent vegetation if a high-water line cannot be identified.

"Sand dunes" means naturally occurring accumulations of sand in ridges or mounds landward of the beach.

"Start of construction" includes substantial improvement, and means the date the building permit was issued by the City, provided the actual start of construction, repair, reconstruction, or improvement was within 180 days of the permit date. The actual start means the first placement of permanent construction of a building (including a manufactured home) on a site, such as the pouring of slabs or footings, installation of piles, construction of columns, or any work beyond the stage of excavation or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main building. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

"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.

"Substantially improved existing manufactured home parks or subdivisions" is where the repair, reconstruction, rehabilitation or improvement of the streets, utilities and pads equals or exceeds 50 percent of the value of the streets, utilities and pads before the repair, reconstruction or improvement commenced.

"Zone of imminent collapse" means an area subject to erosion adjacent to the shoreline of an ocean, bay, or lake and within a distance equal to 10 feet plus 5 times the average annual long-term erosion rate for the site, measured from the reference feature.

"60-year setback" means a distance equal to 60 times the average annual long-term recession rate at a site, measured from the reference feature.

"30-year setback" means a distance equal to 30 times the average annual long-term recession rate at a site, measured from the reference feature.

Section 3. Floodplain Management Standards. Chapter 9.5 "Land Development Regulations," Section 9.5-315 through 9.5-321 of the City Code, "Floodplain Management Standards" is hereby amended to read as follows:

Sec. 9.5-315 Statement Of Purpose

It is the purpose of this Ordinance to promote the public health, safety and general welfare and to minimize public and private losses due to flood conditions in specific areas by provisions designed to:

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

The objectives of this Ordinance are:

- (1) to protect human life and health;
- (2) to minimize expenditure of public money for costly flood control projects;
- (3) to minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- (4) to minimize prolonged business interruptions;

- (5) to minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets and bridges located in floodplains;
- (6) to help maintain a stable tax base by providing for the sound use and development of flood prone areas in such a manner as to minimize flood blight areas, and;
- (7) to insure that potential homebuyers are notified that property is in a flood area.

Sec. 9.5-316 General Provisions

- (a) *Lands To Which This Ordinance Applies.* This Ordinance shall apply to all areas of special flood hazard within the boundaries of the City of Marathon.
- (b) *Basis For Area Of Special Flood Hazard.* The areas of special flood hazard identified by the Federal Emergency Management Agency in its Flood Insurance Rate Map, dated March 3, 1997, with accompanying maps and other supporting data, and any revision thereto.
- (c) A development permit in conformance with the provision of this Ordinance and the applicable provisions of the City Code shall be required before the commencement of any development activities.
- (d) No structure or land shall hereafter be located, extended, converted or structurally altered without full compliance with the terms of this Ordinance.
- (e) The degree of flood protection required by this Ordinance is considered reasonable for regulatory purposes and is based on scientific and engineering consideration. Larger floods can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes. This Ordinance does not imply that land outside the areas of special flood hazard or uses permitted within such areas will be free from flooding or flood damages. This Ordinance shall not create liability on the part the City or by any officer or employee thereof for any flood damages that result from reliance on this Ordinance or any administrative decision lawfully made thereunder.

Sec. 9.5-317 Administration

The city manager or his designee is appointed to administer and implement the provisions of this Ordinance.

The city manager or his designee shall:

- (1) Review all development permits to assure that the permit requirements of this Ordinance have been satisfied.
- (2) Advise permittees that additional federal or state permits may be required, and if specific federal or state permit requirements are known, require that copies of such permits be provided and maintained on file with the development permit.
- (3) Notify adjacent communities and the State of Florida Department of Community Affairs, Division of Emergency Management, prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency.
- (4) Assure that maintenance is provided within the altered or relocated portion of said watercourse so that the flood-carrying capacity is not diminished.
- (5) Verify and record the actual elevation, in relation to mean sea level, of the lowest floor (including basement) of all new or substantially improved structures.
- (6) Verify and record the actual elevation, in relation to mean sea level, to which the new or substantially improved structures have been flood-proofed.
- (7) Verify that in Coastal High Hazard Areas applicants have provided certification from a registered professional engineer or architect that the structure is designed and securely anchored to adequately anchored pilings or columns in order to withstand velocity waters and hurricane wave wash.
- (8) In Coastal High Hazard Areas, review plans for adequacy of breakaway walls.
- (9) Verify that when flood proofing is utilized for a structure, the applicant has obtained certification for the flood proofing from a registered professional engineer or architect.



- (10) Where interpretation is needed as to the exact location of boundaries of the areas of special flood hazard (for example, where there appears to be a conflict between a mapped boundary and actual field conditions) the city manager or his designee shall make the necessary interpretation. Any person contesting the location of the boundary shall be given a reasonable opportunity to appeal the city manager or his designee's interpretation as provided for in this Ordinance.
- (11) When base flood elevation data or floodway data have not been provided by the Federal Emergency Management Agency in accordance with Section 9.5-316 of the City Code, then the city manager or his designee shall obtain, review and reasonably utilize any base flood elevation and floodway data available from a federal, state or other source, in order to administer the provisions of this Ordinance.
- (12) All records pertaining to the provisions of this Ordinance shall be maintained in the office of the city manager or his designee and shall be open for public inspection.

**Sec. 9.5-318 Standards For Flood Hazard Reduction.**

**A. General Standards.**

In all areas of special flood hazard the following standards shall apply:

- (1) New construction and substantial improvements of existing structures shall be anchored to prevent flotation, collapse or lateral movement of the structure;
- (2) Manufactured homes shall be anchored to prevent flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This standard shall be in addition to and consistent with applicable state requirements for resisting wind forces;

- (3) New construction and substantial improvements of existing structures shall be constructed with materials and utility equipment resistant to flood damage;
- (4) New construction or substantial improvements of existing structures shall be constructed by methods and practices that minimize flood damage;
- (5) All electrical, heating, and air conditioning equipment, ventilation, plumbing, and other service facilities shall be designed and/or located to prevent water from entering or accumulating within the components during conditions of flooding;
- (6) New and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system;
- (7) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters;
- (8) Onsite waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during flooding, and;
- (9) Any alteration, repair, reconstruction or improvements to a structure, shall meet the requirements of "new construction" as contained in this Ordinance;
- (10) Any alteration, repair, reconstruction or improvement to a structure that is not compliant with the provisions of this Ordinance, shall be undertaken only if the non-conformity is not furthered, extended or replaced.

**B. Specific Standards.**

In all areas of special flood hazard where base flood elevation data have been provided the following provisions are required:

- (1) Residential Construction. New construction or substantial improvement of any residential structure (or manufactured home) shall have the lowest floor; including basement elevated to or above the base flood level. Should solid foundation perimeter walls be used to elevate a structure, openings sufficient to facilitate the unimpeded movements of floodwaters shall be provided.

(2) *Non-Residential Construction.* New construction or substantial improvement of any commercial, industrial, or nonresidential structure (or manufactured home) shall have the lowest floor, including basement, elevated to or above the base flood level. Structures located in A-zones, together with attendant utility and sanitary facilities, may be flood-proofed in lieu of elevation provided that all areas of the structure below the base flood elevation are designed to be water tight, with walls substantially impermeable to the passage of water, and structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effect of buoyancy. 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 provisions above, and shall provide such certification to the city manager or his designee or designee.

(3) *Elevated Buildings.* New construction or substantial improvements of existing elevated structures that include any fully enclosed area located below the base flood elevation and formed by foundation and other exterior walls shall be designed so as to be a flood resistant or unfinished enclosure and designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters.

(a) Designs for complying with this requirement must either be certified by a professional engineer or architect or meet or exceed the following minimum criteria:

(i) Provide a minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding;

(ii) The bottom of all openings shall be no higher than one foot above grade; and,

(iii) Openings may be equipped with screens, Bouvers, valves or other coverings or devices provided they permit the automatic flow of floodwaters in both direction.

(b) 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) or entry to the living area (stairway or elevator).

(4) Standards for Manufactured Homes and Recreational Vehicles.

(a) All manufactured homes placed, or substantially improved, on individual lots or parcels, in expansions to existing manufactured home parks or subdivisions, or in new or substantially improved manufactured home parks or subdivisions, must be so elevated so that the lowest floor of the manufactured home is elevated to or above the base flood elevation.

(b) All manufactured homes placed or substantially improved in an existing manufactured home park or subdivision must be elevated so that:

(i) The lowest floor of the manufactured home is elevated to or above the base flood elevation, or

(ii) The manufactured home chassis is supported by reinforced piers or other foundation elements of at least an equivalent strength, and no less than 36 inches in height above grade.

(iii) The manufactured home chassis must be securely anchored to the adequately anchored foundation system to resist flotation, collapse, and lateral movement.

(iv) On a site in an existing manufactured home park or subdivision on which a manufactured home has incurred "substantial damage" as the result of a flood, any manufactured home placed or substantially improved on that site must meet the standards set forth in this Ordinance.

(c) All recreational vehicles placed on sites must either:

(i) Be on the site for fewer than 180 consecutive days, or

(ii) Be fully licensed and ready for highway use, or

(iii) The recreational vehicle must meet all the requirements for "new construction," including anchoring and elevation requirements of this Ordinance. A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices and has no permanently attached structures.

(5) *Floodways.* A floodway located in an area of special flood hazard may be an extremely hazardous area due to velocity floodwaters, debris and erosion potential. In addition, the area must remain free of encroachment in order to discharge the base flood without increased flood heights. Therefore, the following provisions shall apply:

(a) Prohibit encroachments, including earthen fill, new construction, substantial improvements and other development within the regulatory floodway unless it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed encroachment shall not result in any increase in flood levels during occurrence of the base flood discharge;

(b) Only if subsection (a) is satisfied, then all new construction and substantial improvements shall comply with all other applicable flood hazard reduction provisions of this Ordinance.

(c) Prohibit the placement of manufactured homes (mobile homes), except in an existing manufactured homes (mobile homes) park or subdivision. A replacement manufactured home may be placed on a lot in an existing manufactured home park or subdivision provided the anchoring standards, the elevation standards, and the encroachment standards of this Ordinance are met.

(6) *Coastal High Hazard Areas (V Zones).* These areas have special flood hazards associated with wave wash, therefore, the following provisions shall apply:

(a) All new construction shall be located landward of the reach of the mean high tide;

- (b) All new construction and substantial improvements of existing structures shall be elevated so that the bottom of the lowest horizontal structure member of the lowest floor (excluding pilings or columns) is elevated to or above the base flood level. All space below the lowest supporting member shall remain free of obstruction or constructed with non-supporting breakaway walls, open-wood lattice work, or insect screening intended to collapse under wind and water loads without causing collapse, displacement, or other structural damage to the elevated portion of the building or supporting foundation system. Open lattice work or decorative screening 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 subsection (f) below;
- (c) All new construction and substantial improvements of existing structures shall be securely anchored on pilings or columns;
- (d) All pile or column foundations and structures attached thereto shall be 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 used shall be those required by applicable state or local building code standards.
- (e) A registered professional engineer or architect shall develop or review the structural design, specifications and plans for construction, and shall certify that the design, specifications and plans for construction are in compliance with the provisions contained in subsections (b) (c), and (d).

All space below the lowest horizontal supporting member must remain free of obstruction or constructed with non-supporting breakaway walls, open wood lattice-work, or insect screening intend to collapse under wind and water loads without causing collapse, displacement, or other structural damage to the elevated portion of the building or supporting foundation system. For the purposes of this section, a breakaway wall shall have a design safe loading resistance of not less than 10 and no more than 20 pounds per square foot. Use of breakaway walls that exceed a

design safe loading resistance of 20 pounds per square foot map be permitted only if a registered professional engineer or architect certifies that the designs meet the following conditions:

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

Such enclosed space may only be used solely for parking of vehicles, building access, or storage.

- (g) There shall be no fill used as structural support;
- (h) There shall be no alteration of sand dunes or mangrove stands that would increase potential flood damage.

**C. Standards For Areas Of Shallow Flooding (AO Zones).**

These areas have flood hazards associated with base flood depths of one to three feet (1'-3'), where a clearly defined channel does not exist and where the path of flooding is unpredictable and indeterminate; therefore, the following provisions apply:

- (1) All new construction and substantial improvements of residential structures shall have the lowest Boor, including basement, elevated above the highest adjacent grade at least as high as the depth number specified on the Flood Insurance Rate Map. If no flood depth number is specified, the lowest floor, including basement, shall be elevated at least two feet (2) above the highest adjacent grade.
- (2) All new construction and substantial improvements of nonresidential structures shall:

- (a) have the lowest floor, including basement, elevated above the highest adjacent grade at least as high as the depth number specified in feet on the Flood Insurance Rate Map. If no flood depth number is specified, the lowest floor, including basement, shall be elevated at least two (2) feet above the highest adjacent grade, or;
- (b) together with attendant utility and sanitary facilities be completely flood-proofed to the specified flood level so that any space below that level 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. Certification is required as stated in subsection (B)(2).

**D. Standards For Subdivision Proposals.**

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

**Section 9.5-319 Permit Procedures.**

- (a) The city manager or his designee 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 set forth in Chapter 4.5 of the City Code, 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 this Ordinance.
- (b) The developer shall provide a floor elevation or floodproofing certification 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 horizontal structural members of the lowest floor.

- (c) Within fifteen (15) calendar days of establishment of the lowest floor elevation or floodproofing by whatever construction means, or upon placement of the horizontal structural members of the lowest floor, whichever is applicable, it shall be the duty of the permit holder to submit to the city manager or his designee a certification of the elevation of the lowest floor or the lowest portion of the horizontal structural members of the lowest floor, whichever is applicable, as built, in relation to mean sea level.
- (d) 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 flood proofing is utilized for a particular building, the certification shall be prepared by or under the direct supervision of a professional engineer or architect and certified by the same. Any work done within the fifteen (15) day period and before submission of the certification shall be at the permit holder's risk. The city manager or his designee shall review the floor elevation survey data submitted.
- (e) Deficiencies detected by such review shall be corrected by the permit holder immediately and before 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.

**See, 9.5-320. Standards.**

No building permit for proposed construction within an area of special flood hazard shall be granted unless the proposed construction is in compliance with the standards set forth in this Ordinance. In the instance of a historic structure, a determination shall be made that the variance is the minimum necessary so as not to destroy the historic character and design of the building.

**Sec. 9.5-321. Variances.**

- (a) *Generally.* Where, owing to special conditions, a literal enforcement of the floodplain management provisions contained herein would result in exceptional hardship unique to that property or proposed project, the City Planning Commission 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 city manager or his designee in a form provided by the city manager or his designee at the time of application for a building permit.
- (2) Within thirty (30) days of receipt of a complete application for a variance from the terms of the floodplain management provisions of this chapter, the city manager or his designee shall review the application, and submit a report and recommendation to the City Planning Commission.
- (3) The City Planning Commission shall review the application and the reports and recommendations of the city manager or his designee and the Building Official and consider granting the variance in accordance with the conditions set forth in this section.

(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 the City Code; and
  - d. Specific written findings linked to the criteria below.

- 42) 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 effect 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 alternative 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 flood-plain 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 City Planning Commission considers the propriety of granting a variance as permitted by this division, 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 City Planning Commission 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 reduced lowest floor elevation. The City manager or his designee shall maintain a copy of all such notices.
- (5) All variances issued shall require that an affidavit be prepared, and recorded with the clerk of the circuit court, which shows that the proposed construction will be located in a flood-prone 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 floor elevation decreases.
- (6) The city manager or his designee shall maintain records of all variance actions and annually report any variances to the Federal Emergency Management Agency.

Section 4.     **Repeal of Conflicting Provisions.** Chapter 9.5 "Land Development Regulations", Sections 9.5-125 through 9.5-127 as set forth in Exhibit "A" and Sections 9.5-315 through 9.5-321 of the City Code, "Floodplain Management Standards," as set forth in Exhibit "B" are hereby repealed.

Section 5.     **Approval by the State Department of Community Affairs.** The provisions of this Ordinance constitute a "land development regulation" as State law defines that term. Accordingly, the City Manager is authorized to forward a copy of this Ordinance to the DCA for approval pursuant to Sections 380.05(6) and (11) Florida Statutes.

Section 6.     **Severability.** The provisions of this Ordinance are declared to be severable if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentence, clauses, and phrases of this Ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part. Any provision of the City Code that conflict with this Ordinance is hereby repealed.

Section 7.     **Inclusion in the Code.** It is the intention of the City Council and it is hereby ordained that the provisions of this Ordinance shall become and be made a part of the code of the City of Marathon, Florida, that the sections of the Ordinance may be renumbered or relettered to accomplish such intentions, and that the word "Ordinance" shall be changed to "Section" or other appropriate word.

Section 8.     **Effective Date.** This Ordinance shall be effective immediately upon approval by the State Department of Community Affairs pursuant to Chapter 380, Florida States.

The foregoing Ordinance was offered by Councilmember \_\_\_\_\_, who moved for its adoption. This motion was seconded by Councilmember \_\_\_\_\_, and upon being put to a vote, the vote was as follows:


Mayor Robert Miller \_\_\_\_\_  
Vice Mayor John Bartus \_\_\_\_\_  
Councilman Frank Greenman \_\_\_\_\_  
Councilman Jon Johnson \_\_\_\_\_  
Councilman Randy Mearns \_\_\_\_\_

PASSED on first reading this 13<sup>th</sup> day of September, 2000.

The foregoing Ordinance was offered by Councilmember \_\_\_\_\_,  
who moved for its adoption. This motion was seconded by Councilmember  
\_\_\_\_\_, and upon being put to a vote, the vote was as follows:

Mayor Robert Miller \_\_\_\_\_  
Vice Mayor John Bartus \_\_\_\_\_  
Councilman Frank Greenman \_\_\_\_\_  
Councilman Jon Johnson \_\_\_\_\_  
Councilman Randy Mearns \_\_\_\_\_

PASSED AND ADOPTED on second reading this 26<sup>th</sup> day of  
SEPTEMBER, 2000.

  
\_\_\_\_\_  
ROBERT MILLER, MAYOR

ATTEST:

  
\_\_\_\_\_  
CITY CLERK

APPROVED AS TO LEGAL SUFFICIENCY:

  
\_\_\_\_\_  
CITY ATTORNEY



STATE OF FLORIDA  
DEPARTMENT OF COMMUNITY AFFAIRS

"Dedicated to making Florida a better place to call home"

JED BUSH  
Governor

COLLEEN CASTILLE  
Secretary

May 7, 2002

Ms. Alison Bieler  
Weiss, Serota and Helsman  
2665 S. Bayshore Drive  
Suite 240  
Miami, FL 33133

Dear Ms. Bieler:

The Department has reviewed and approved the City of Marathon's 2<sup>nd</sup> Floodplain Management and Regulations Ordinance, No. 02-01-07. Our review and approval of this Ordinance, which amended the City's 1<sup>st</sup> Floodplain Ordinance, No. 00-09-07, was in its totality and it is not necessary to have another Final Order issued for the 1<sup>st</sup> Ordinance.

Sincerely yours,

Rebecca Jetton, Administrator  
Florida Area of Critical State Concern

2555 SHUMARD OAK BOULEVARD • TALLAHASSEE, FLORIDA 32309-2100  
Phone: 850.488.8466/Suncom 278.8466 FAX: 850.921.0781/Suncom 291.0781  
Internet address: <http://www.dca.state.fl.us>

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Tallahassee, FL 32309-2100

HOUSING & COMMUNITY DEVELOPMENT  
2555 Shumard Oak Boulevard  
Tallahassee, FL 32309-2100