

**ORDINANCE NO. 2016-32-OA**

**AN ORDINANCE OF THE TOWNSHIP OF BERKELEY, COUNTY OF OCEAN,  
STATE OF NEW JERSEY, AMENDING THE TOWNSHIP CODE OF THE  
TOWNSHIP OF BERKELEY, AMENDING CHAPTER XXIX, ENTITLED "FLOOD  
DAMAGE PREVENTION", SO AS TO AMEND VARIOUS SECTIONS**

**November 14, 2016**

**BE IT ORDAINED** by the Township Council of the Township of Berkeley, County of Ocean, and State of New Jersey, as follows:

**SECTION 1.** Chapter XXIX of the Township Code of the Township of Berkeley, entitled "Flood Damage Prevention," is hereby amended so as to amend §29-2, entitled "Definitions," which shall read as follows:

**§29-2 DEFINITIONS.**

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

**Advisory Base Flood Elevation (ABFE)** shall mean the elevation shown on a community's Advisory Flood Hazard Map that indicates the advisory stillwater elevation plus wave effect ( $ABFE = SWEL + \text{wave effect}$ ) resulting from a flood that has a one (1%) percent or greater chance of being equaled or exceeded in any given year.

**Advisory Flood Hazard Area (AFHA)** shall mean the land in the floodplain within a community subject to flooding from the one (1%) percent annual chance event depicted on the Advisory Flood Hazard Map.

**Advisory Flood Hazard Map** shall mean the official map on which the Federal Emergency Management Administration has delineated the areas of advisory flood hazards applicable to the community.

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

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

**Area of special flood hazard** shall mean the land in the floodplain within a community subject to a one (1%) percent or greater chance of flooding in any given year. It is shown on the FIRM as Zone V, VE, V1-30, A, AO, A1-A30, AE, A99, or AH.

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

**Base Flood Elevation (BFE)** shall mean the flood elevation shown on a published Flood Insurance Study (FIS) including the Flood Insurance Rate Map (FIRM). For zones AE, AH, AO, and A1-A30, the elevation represents the water surface elevation resulting from a flood that has a one (1%) percent or greater chance of being equaled or exceeded in any given year. For zones VE and V1-30 the elevation represents the stillwater elevation (SWEL) plus wave effect ( $BFE = SWEL + \text{wave effect}$ ) resulting from a flood that has a one (1%) percent or greater chance of being equaled or exceeded in any given year.

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

**Best available flood hazard data** shall mean the most recent available flood risk guidance FEMA has provided. The best available flood hazard data may be depicted on Work Maps or Preliminary FIS and FIRM.

**Best available flood hazard data elevation** shall mean the most recent available flood elevation FEMA has provided. The best available flood hazard data elevation may be depicted on an Advisory Flood Hazard Area Map; Work Map; or Preliminary FIS and FIRM.

**Breakaway wall** shall mean a wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces without causing damage to the elevated portion of the building or supporting foundation system.

**Building height in a SFHA** shall mean vertical distance measured from the average elevation of the finished lot grade to the highest point of the roof for flat roofs, to the deckline of a mansard roof and to the mean height between the eaves and ridge for a gable or hipped roof. The height is permitted to be a maximum of 35 feet plus the Base Flood Elevation (BFE) in residential zones. All other zones shall be approved by the Zoning Officer.

**Coastal A or AE Zone** shall mean the portion of the special flood hazard area (SFHA) starting from a Velocity (V) Zone and extending up to the landward limit of moderate wave action delineation. Where no V Zone is mapped the Coastal A or AE Zone is the portion between the shore and the landward limit of the moderate wave action delineation. Coastal A or AE

Zones may be subject to wave effects, velocity flows, erosion, scour, or combinations of these forces and construction/development is to be designed to resist the anticipated combination of the flood loads, including hydrostatic, hydrodynamic, wave and debris loads.

**Coastal high hazard area** shall mean an area of special flood hazard extending from offshore to the inland limit of a primary frontal dune along an open coast and any other area subject to high velocity wave action from storms or seismic sources.

**Crawl space** shall mean an uninhabitable area below the habitable building which has a vertical distance from the crawl space floor to the finished elevation of the first floor of the building of six (6) feet or less.

**Design Flood Elevation (DFE)** shall mean the locally adopted regulatory flood elevation. The DFE will always exceed the base flood elevation (BFE). (BFE + 1 ft of Freeboard =DFE).

**Development** shall mean 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 located within the area of special flood hazard.

**Development Permit** shall mean an application for a Development Permit is required within designated Special Flood Hazard Zones pursuant to Section 6.0, Flood Damage Prevention, and Chapter 29 of the Township of Berkeley. Application for a development permit shall be made only on the forms provided by the Certified Floodplain Manager and may include, but not limited to: plans in duplicate drawn to scale showing the nature, location, dimensions, and elevations of the area in question, as well as existing or proposed structures, fill, grading, paving, excavation or drilling operations or storage of equipment or materials.

**Digital Flood Insurance Rate Map (DFIRM)** shall mean the official map on which the Federal Insurance Administration has delineated both the areas of special flood hazards and the risk premium zones applicable to the community.

**Elevated Building** shall mean a non-basement building (i) built, in the case of a building in an area of special flood hazard, to have the top of the elevated floor or, in the case of a building in a coastal high hazard area, to have the bottom of the lowest horizontal structural member of the elevated floor, elevated above the base flood elevation by means of piling, columns (posts and piers), or shear walls parallel to the flow of the water, and (ii) adequately anchored so as not to impair the structural integrity of the building during a flood up to the magnitude of the base flood. In an area of special flood hazard "elevated building" also includes a

building elevated by means of fill or solid foundation perimeter walls with openings sufficient to facilitate the unimpeded movement of flood waters. In areas of coastal high hazard "elevated buildings" also includes a building otherwise meeting the definition of "elevated building" even though the lower area is enclosed by means of breakaway walls.

**Erosion** shall mean the process of the gradual wearing away of land masses.

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

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

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

**Flood Insurance Rate Map (FIRM)** shall mean the official map on which the Federal Insurance Administration has delineated both the areas of special flood hazards and the risk premium zones applicable to the community.

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

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

**Floodproofing** shall mean any combination of structural and nonstructural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

**Floodway** shall mean the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation

more than 0.2 foot.

**Freeboard** shall mean a factor of safety usually expressed in feet above the base flood elevation. Freeboard tends to compensate for many unknown factors that could contribute to flood heights greater than the base flood elevation. The Township of Berkeley has adopted a one (1) foot freeboard.

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

**Historic structure** shall mean any structure that is:

- a. Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
- b. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
- c. Individually listed on a State inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or
- d. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
  1. By an approved State program as determined by the Secretary of the Interior; or
  2. Directly by the Secretary of the Interior in states without approved programs.

**Limit of Moderate Wave Action (LiMWA)** shall mean the inland limit of the area affected by waves greater than 1.5 feet during the base flood. Base flood conditions between the VE Zone and the LiMWA will be similar to, but less severe than those in the VE Zone.

**Lowest floor** shall mean the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for the parking of vehicles, building access or storage in an area other than a basement is not considered a building's lowest floor provided that such enclosure is not built so to render the structure in violation of other applicable non-elevation design requirements of CFR Section 60.3.

**Manufactured home** shall mean a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for

use with or without a permanent foundation when attached to the required utilities. The term "manufactured home" does not include a "recreational vehicle".

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

**Market value** shall mean the equalized assessed valuation as determined by the Township Tax Assessor.

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

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

**Preliminary Flood Insurance Rate Map (FIRM)** shall mean the draft version of the FIRM released for public comment before finalization and adoption.

**Primary frontal dune** shall mean 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 from coastal storms. The inland limit of the primary frontal dune occurs at the point where there is a distinct change from the relatively steep slope to a relatively mild slope.

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

**Repetitive loss** shall mean flood related damages sustained by a structure on two (2) separate occasions during a 10-year period for which the cost of repairs at the time of each such flood event, on the average, equals or exceeds twenty-five (25%) percent of the market value of the structure before the damaged occurred and at the time of the second incidence of flood-related damage, the contract for flood insurance contains increased cost of compliance coverage.

**Sand dunes** shall mean naturally occurring or manmade accumulations of sand in ridges or mounds landward of the beach.

**Severe repetitive loss** shall mean flood related damages sustained by a structure on four (4) or more separate occasions for which the cost of repairs at the time of each such flood event exceeding \$5,000.00 with a cumulative amount of \$20,000.00 or on two (2) separate occasions where the cumulative amount of the damage exceeds the market value of the structure.

**Start of construction** shall mean for other than new construction or substantial improvements under the Coastal Barrier Resources Act (P.L. No. 97-348) includes substantial improvements and means 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. The actual start means either the first placement of permanent construction of a structure on a site such as the pouring of a slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation, or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling nor does it include the installation of streets and/or walkways, nor does it include excavation for a basement, footings or piers, or foundations or the erection of temporary forms, nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

**Structure** shall mean a walled and roofed building, a manufactured home, or a gas or liquid storage tank that is principally above ground.

**Substantial damage** shall mean damage from a storm of any origin sustained by a structure whereby the cost of restoring the structure to its original condition before the storm would equal or exceed fifty (50%) percent of the market value of the structure (based on tax records prior to the storm event) before the damage occurred.

**Substantial improvement** shall mean any reconstruction, rehabilitation, addition, or other improvement of a structure, due to a storm, during a 10-year period, the cumulative cost of improvements over a 10-year period which equals or exceeds fifty (50%) percent of the market value of the structure (based on current tax records) before the "start of construction" of the improvement. This term includes structures which have incurred "substantial damage", regardless of the actual repair work

performed. The term does not, however, include either:

- a. Any project for improvement of a structure to correct existing violations of State or local health, sanitary or safety code specifications which have been identified by the local code enforcement officer and which are the minimum necessary to assure safe living conditions; or
- b. Any alteration of a "historic structure", provided that the alteration will not preclude the structure's continued designation as a "historic structure".
- c. Any project for improvement of a structure that is not related to storm damage.

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

**Violation** shall mean the failure of a structure or other development to be fully compliant with this ordinance. A new or substantially improved structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in 44 CFR §60.3(b)(5), (c)(4), (c)(10), (e)(2), (e)(4), or (e)(5) is presumed to be in violation until such time as that documentation is provided.

**SECTION 2.** Chapter XXIX of the Township Code of the Township of Berkeley, entitled "Flood Damage Prevention," is hereby amended so as to amend §29-3.3, entitled "Penalties for Noncompliance," which shall read as follows:

**§29-3.3 Penalties for Noncompliance.**

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

**SECTION 3.** Chapter XXIX of the Township Code of the Township of Berkeley, entitled “Flood Damage Prevention,” is hereby amended so as to amend §29-4.1, entitled “Establishment of Development Permit,” which shall read as follows:

**§29-4.1 Establishment of Development Permit.**

A development permit shall be obtained before construction or development begins, including placement of manufactured homes, within any area of special flood hazard established in subsection 29-3.2. Application for a development permit shall be made on forms furnished by the Flood Mitigation Officer and may include, but not be limited to; plans in duplicate drawn to scale showing the nature, location, dimensions, and elevations of the area in question; existing or proposed structures, fill, storage of materials, drainage facilities; and the location of the foregoing. Refer to the Berkeley Township Floodplain Checklist. Specifically, the following information is required:

- a. Elevation in relation to mean sea level, of the lowest floor (including basement) of all structures;
- b. Elevation in relation to mean sea level to which any structure has been floodproofed;
- c. Certification by a registered professional engineer or architect that the floodproofing methods for any nonresidential structure meet the floodproofing criteria in subsection 29-5.2b; and
- d. Description of the extent to which any watercourse will be altered or relocated as a result of proposed development.

**SECTION 4.** Chapter XXIX of the Township Code of the Township of Berkeley, entitled “Flood Damage Prevention,” is hereby amended so as to amend §29-4.2, entitled “Designation of Local Administrator,” which shall read as follows:

**§29-4.2 Designation of the Local Administrator.**

The Certified Floodplain Manager (CFM) is hereby appointed to administer and implement this chapter by granting or denying development permit applications in accordance with its provisions.

**SECTION 5.** Chapter XXIX of the Township Code of the Township of Berkeley, entitled “Flood Damage Prevention,” is hereby amended so as to amend §29-4.3, entitled “Duties and Responsibilities of the Administrator,” which shall read as follows:

### **§29-4.3 Duties and Responsibilities of the Administrator.**

Duties of the Certified Floodplain Manager shall include, but not be limited to:

#### **a. Permit Review.**

1. Review all development permits to determine that the permit requirements of this chapter have been satisfied.
2. Review permit applications to determine whether improvements or repairs of buildings in SFHAs constitute substantial improvement or repair of substantial damage.
3. Review all development permits to determine that all necessary permits have been obtained from those Federal, State or local governmental agencies from which prior approval is required.
4. Review all development permits to determine if the proposed development is located in the floodway. If located in the floodway, assure that the encroachment provisions of subsection 29-5.3a. are met.
5. Review all development permits in the coastal high hazard area of the area of special flood hazard to determine if the proposed development alters sand dunes so as to increase potential flood damage.
6. Review plans for walls to be used to enclose space below the base flood level

7. Review Flood Elevation Certificate for building under construction.

(a) A flood vent certification is required when flood vents are provided.

8. All permits are reviewed using the information provided within the Berkeley Township Floodplain Development Permit Application and the Berkeley Township Flood Plain Permit Checklist.

b. **Use of Other Base Flood and Floodway Data.** When base flood elevation and floodway data have not been provided in accordance with subsection 29-3.2 Basis for Establishing the Areas of Special Flood Hazard, the Flood Mitigation Officer 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 subsection 29-5.2a. Specific Standards, Residential Construction, and subsection 29-5.2b. Specific Standards, Nonresidential Construction.

#### **c. Information to Be Obtained and Maintained.**

1. Obtain and record the actual elevation (in relation to mean sea level) of the lowest floor (including basement) of all new or substantially improved structures, and whether or not the structure contains a basement.
2. For all new or substantially improved floodproofed structures:

(a) Verify and record the actual elevation (in relation to mean sea level); and

(b) Maintain the floodproofing certifications required in subsection 29-4.1c.

3. In coastal high hazard areas, certification shall be obtained from a registered professional engineer or architect that the provisions of subsection 29-5.4b,1 and subsection 29-5.4b,2 (a) and (b) are met.
4. Maintain for public inspection all records pertaining to the provisions of this chapter.
5. Maintain the Communities letters documenting the Substantial Damage and Substantial Improvement properties as well as all related documentation used in making the determination.
6. Maintain all elevation certificates for a minimum period of 5 years.

**d. Alteration of Watercourses.**

1. Notify adjacent communities and the New Jersey Department of Environmental Protection, Dam Safety and Flood Control Section and the Land Use Regulation Program prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Insurance Administration.
2. Require that maintenance is provided within the altered or relocated portion of said watercourse so the flood carrying capacity is not diminished.

**e. Interpretation of Firm Boundaries.** Make interpretations where needed, as to the exact location of the boundaries of the areas of special flood hazards (for example, where there appears to be a conflict between a mapped boundary and actual field conditions). The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in subsection 29-4.4.

**f. Certificate of Occupancy Review**

1. Final Elevation Certificate for finished construction and As-built Survey review required prior to the issuance of a Certificate of Occupancy (C.O.). A Flood Vent Certification is required and attached where applicable.
2. A V Zone and Coastal A Zone require a V Zone Certificate provided by a Professional Engineer.
3. A Breakaway Wall Certificate provided by a Professional Engineer is required where the floor below the finished floor is enclosed.

4. Prior to the issuance of a C.O., the Applicant shall submit a completed Nonconversion Agreement to the Certified Floodplain Manager and copy to the Tax Office.

g. **Flood Elevation Certificate for Resale or Transfer of Title.**

1. No certificate of compliance for resale or transfer of title shall be issued until the seller of a dwelling unit, commercial unit or industrial unit, which is determined to be in the special flood hazard area (SFHA) shall have provided to the Certified Floodplain Manager (CFM) an updated flood elevation certificate in accordance with the Berkeley Township Elevation Certificate Checklist
2. If a dwelling/structure is found to be violation as a result of non-compliance with the requirements of the Flood Damage Prevention Ordinance, the dwelling/structure shall be modified or reconstructed to be brought into compliance or provide a letter of intent to the CFM to either elevate or demolish the dwelling/structure.
3. If a violation is found, the Township Code Official will issue a violation.

**SECTION 6.** Chapter XXIX of the Township Code of the Township of Berkeley, entitled “Flood Damage Prevention,” is hereby amended so as to amend §29-4.4, entitled “Variance Procedure,” which shall read as follows:

**§29-4.4 Variance Procedure.**

a. **Appeal Board.**

1. The Berkeley Township Planning Board as established by the Township of Berkeley shall hear and decide appeals and requests for variances from the requirements of this chapter.
2. The Planning Board shall hear and decide appeals when it is alleged there is an error in any requirement, decision, or determination made by the Flood Mitigation Officer in the enforcement or administration of this chapter.
3. Those aggrieved by the decision of the Planning Board or any taxpayer, may appeal such decision to the Superior Court of New Jersey.
4. In passing upon such applications, the Planning Board shall consider all technical evaluations, all relevant factors, standards specified in other sections of this ordinance, and:
  - (a) The danger that materials may be swept onto other lands to the injury of others;

- (b) The danger to life and property due to flooding or erosion damage;
- (c) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
- (d) The importance of the services provided by the proposed facility to the community;
- (e) The necessity to the facility of a waterfront location, where applicable;
- (f) The availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;
- (g) The compatibility of the proposed use with existing and anticipated development;
- (h) The relationship of the proposed use to the comprehensive plan and floodplain management program of that area;
- (i) The safety of access to the property in times of flood for ordinary and emergency vehicles;
- (j) The 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,
- (k) 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.

5. Upon consideration of the factors of subsection 29-4.4a,4 and the purposes of this chapter, the Planning Board may attach such conditions to the granting of variances as it deems necessary to further the purposes of this chapter.

6. The Flood Mitigation Officer shall maintain the records of all appeal actions, including technical information, and report any variances to the Federal Insurance Administration upon request.

b. **Conditions for Variances.**

1. Generally, variances may be issued for new construction and substantial improvements to be erected on a lot of one-half (1/2) acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing in subsection 29-4.4a,4(a)-(k) have been fully considered. As the lot size increases beyond the one-half (1/2) acre, the technical justification required for issuing the variance increases.

2. Variances may be issued for the repair or rehabilitation of historic structures

upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.

3. Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.
4. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
5. Variances shall only be issued upon:
  - (a) A showing of good and sufficient cause;
  - (b) A determination that failure to grant the variance would result in exceptional hardship to the applicant; and,
  - (c) A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public as identified in subsection 29-4.4a,4, or conflict with existing local laws or ordinances.
6. Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with a lowest floor elevation below the base flood elevation and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.

*c. Notice and Fees.*

1. Ten (10) days' notice of an appeal shall be provided to the adjoining property owners in the same manner as provided for in the Municipal Land Use Act, N.J.S.A. 40:55D-1 et seq.
2. The fee for an appeal shall be one hundred (\$100.00) dollars, which shall be paid to the Planning Board Secretary.

**SECTION 7.** Chapter XXIX of the Township Code of the Township of Berkeley, entitled "Flood Damage Prevention," is hereby amended so as to amend §29-4.5, entitled "Fees," which shall read as follows:

**§29-4.5 FEES**

Fees to compensate the Township for the expense of processing applications for development permits within the Special Flood Hazard Area (SFHA) shall be paid with the application.

1. Permit Application Review - 250.00
2. Revised Application Review - \$100.00
3. Certificate of Occupancy or Bulkhead Review - \$150.00
4. Elevation Certificate Review for Resale - \$100.00
5. Inspection for Substantial Damage/Improvement - \$150.00
6. Letter for Substantial Damage / Improvement - \$100.00
7. Map Determination Letter - \$100.00

**SECTION 8.** Chapter XXIX of the Township Code of the Township of Berkeley, entitled "Flood Damage Prevention," is hereby amended so as to amend §29-5.4, entitled "Coastal High Hazard Area," which shall read as follows:

**§29-5.4 Coastal High Hazard Area and Coastal A Zones.**

Coastal high hazard areas (V or VE Zones) and Coastal A Zones (or AE Zones) are located within the areas of special flood hazard established in subsection 29-3.2. These areas have special flood hazards associated with high velocity waters from tidal surges and hurricane wave wash; therefore, the following provisions shall apply:

*a. Location of Structures.*

1. All buildings or structures shall be located landward of the reach of the mean high tide.
2. The placement of manufactured homes shall be prohibited, except in an existing manufactured home park or subdivision.

*b. Construction Methods.*

1. Elevation. All new construction and substantial improvements in the Coastal High Hazard Areas and Coastal A Zones (or AE Zones) shall be elevated on piling or columns so that:
  - (a) The bottom of the lowest horizontal structural member of the lowest floor (excluding the piling or columns) is elevated to or above the base flood elevation (published FIS/FIRM), the best available flood hazard data elevation or as required by the Uniform Construction Code (N.J.A.C. 5:23), whichever is more restrictive; and,
  - (b) With all space below the lowest floor's supporting member open so as not to impede the flow of water, except for breakaway walls as provided or in subsection 29-5.4b,4.

2. Structural Support.

(a) All new construction and substantial improvements shall be securely anchored on piling or columns.

(b) The pile or column foundation and structure attached thereto shall be anchored to resist flotation, collapse or lateral movement due to the effects of wind and water loading values each of which shall have a one (1%) percent chance of being equaled or exceeded in any given year (100-year mean recurrence interval).

(c) There shall be no fill used for structural support.

3. Certification. 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 accepted standards of practice for compliance with the provisions of subsections 29-5.4b,1 and 29-5.4b,2(a) and (b).

4. Space Below the Lowest Floor.

(a) Any alteration, repair, reconstruction or improvement to a structure started after the enactment of this chapter shall not enclose the space below the lowest floor unless breakaway walls, open wood lattice-work or insect screening are used as provided for in this section.

(b) Breakaway walls, open wood lattice-work or insect screening shall be allowed below the base flood elevation provided that they are 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. Breakaway walls shall be designed for a safe loading resistance of not less than ten (10) and no more than twenty (20) pounds per square foot. Use of breakaway walls which exceed a design safe loading of twenty (20) pounds per square foot (either by design or when so required by local or State codes) may be permitted only if a registered professional engineer or architect certifies that the designs proposed meet the following conditions.

(1) Breakaway wall collapse shall result from a water load less than that which would occur during the base flood and,

(2) 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 load acting simultaneously on all building components (structural and nonstructural). 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.

- (3) Breakaway wall sheathing and siding shall be discontinuous at elevated floor beams and joists; horizontal separation joints shall be provided to prevent damage to the sheathing or siding above the floor of the elevated building.
- (4) Utilities, including electrical wiring, breaker boxes, power meters, plumbing, conduits, and ventilation ducts, shall not be placed in or attached to breakaway wall panels. Building supply lines and other utility fixtures, such as light switches or electrical outlets, may be attached to the sheltered side of vertical foundation members as allowed by applicable building codes.
- (5) Breakaway wall panels shall be positioned such that, on failure, they do not collapse against cross-bracing or threaten other foundation components.
- (6) Garage doors installed in enclosures with breakaway walls are required to breakaway under flood conditions. Standard residential garage doors may be considered breakaway panels and flood loads acting on these doors need not be considered.

(c) If breakaway walls are utilized, such enclosed space shall be used solely for parking of vehicles, building access, or storage and not for human habitation.

(d) Prior to construction, plans for any breakaway wall must be submitted to the Construction Code Official or Building Sub-Code Official for approval.

(e) The following are **not permitted** for breakaway wall construction:

- (1) Continuous breakaway wall systems that span across pilings.
- (2) Partial-height breakaway walls, whereas the walls are constructed so that the bottom portion of the wall breaks away while the top portion of the wall is strengthened to survive the design event.

c. Sand Dunes.

Prohibit manmade alteration of sand dunes within Zones VE and V on the community's DFIRM which would increase potential flood damage.

**SECTION 9.** All ordinances or parts of ordinances inconsistent herewith are hereby repealed.

**SECTION 10.** If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions hereof.

**SECTION 11.** This ordinance shall take effect after second reading and publication as required by law.

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CARMEN F. AMATO, JR., Mayor

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JOHN A. BACCHIONE, Council President  
SOPHIA GINGRICH, Council Vice President

### **NOTICE**

**NOTICE IS HEREBY GIVEN** that the foregoing ordinance was introduced and passed on first reading at a regular meeting of the Township Council of the Township of Berkeley, in the County of Ocean, State of New Jersey, held on **November 14, 2016**, and will be considered for second reading and final passage at the regular meeting of said Governing Body to be held on the **5<sup>th</sup>** day of **December, 2016**, at 6:00 p.m., or as soon thereafter as this matter can be reached, at the meeting room of the Municipal Building located at 627 Pinewald-Keswick Road, Bayville, New Jersey, at which time all persons interested shall be given an opportunity to be heard concerning this ordinance.

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**BEVERLY M. CARLE, RMC**  
Township Clerk, Township of Berkeley