COUNTY COUNCIL

OF

TALBOT COUNTY, MARYLAND

2013 Legislative Session, Legislative Day No.: February 26, 2013

Bill No.: 1233

Expiration Date: May 2, 2013

Introduced by: Mr. Bartlett, Mr. Duncan, Mr. Hollis, Mr. Pack, Ms. Price

A BILL TO REPEAL AND REENACT CHAPTER 70, "FLOODPLAIN MANAGEMENT ORDINANCE," TALBOT COUNTY CODE, IN CONNECTION WITH THE NOTICE OF FINAL FLOOD HAZARD DETERMINATIONS FROM THE FEDERAL EMERGENCY MANAGEMENT AGENCY; TO ADOPT THE FLOOD INSURANCE STUDY REPORT DATED AUGUST 5, 2013, AND TO ADOPT THE FLOOD INSURANCE RATE MAPS TO BECOME EFFECTIVE ON AUGUST 5, 2013

By the Council: February 26, 2013

Introduced, read first time, ordered posted, and public hearing scheduled on Tuesday, March 26, 2013 at 6:30 p.m. at the Bradley Meeting Room, Talbot County Court House, South Wing, 11 North Washington Street, Easton, Maryland 21601.

By Order Susan W. Moran

Susan W. Moran, Secretary

A BILL TO REPEAL AND REENACT CHAPTER 70, "FLOODPLAIN MANAGEMENT ORDINANCE," TALBOT COUNTY CODE, IN CONNECTION WITH THE NOTICE OF FINAL FLOOD HAZARD DETERMINATIONS FROM THE FEDERAL EMERGENCY MANAGEMENT AGENCY; TO ADOPT THE FLOOD INSURANCE STUDY REPORT DATED AUGUST 5, 2013, AND TO ADOPT THE FLOOD INSURANCE RATE MAPS TO BECOME EFFECTIVE ON AUGUST 5, 2013

SECTION ONE: BE IT ENACTED BY THE COUNTY COUNCIL OF TALBOT COUNTY, MARYLAND, that Chapter 70, Talbot County Code, "Floodplain Management Ordinance" shall be and is hereby repealed and enacted as set forth herein.

KEY

Boldface .....Heading

Italic.....Defined term.

Underlining.....Added by amendment after planning commission 2/6/13 recommendation.

~~Strikethrough~~ .....Deleted by amendment after planning commission 2/6/13 recommendation.

Talbot County

Floodplain Management Ordinance

Effective August 5, 2013

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This ordinance was prepared for Talbot County by Environmental Resources Management, Inc., under award number NA 11 NOS4190 151 from the Office of Ocean and Coastal Resource Management OCRM), National Oceanic and Atmospheric Administration NOAA), through the Maryland Department of Natural Resources Chesapeake and Coastal Program. The statements, findings, conclusions and recommendations are those of the author(s) and do not necessarily reflect the views of NOAA or the U.S. Department of Commerce.

Chapter 70. Floodplain Management
Talbot County, Maryland

ARTICLE I GENERAL PROVISIONS

70-1. Findings

A. The *Federal Emergency Management Agency (FEMA)* has identified *special flood hazard areas* within Talbot County. *Special flood hazard areas* are subject to periodic inundation which may result in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety and general welfare. *Structures* that are inadequately elevated, improperly *floodproofed*, or otherwise unprotected from *flood* damage also contribute to *flood* losses.

B. *Floodplains* perform vital natural functions such as temporary storage of floodwaters, moderation of peak flood flows, water quality maintenance, groundwater recharge, erosion control, wildlife habitat, recreational opportunities, and improved aesthetics. These functions are best served if *floodplains* are kept in their natural state. Wherever possible, the natural characteristics of *floodplains* and their associated wetlands and water bodies should be preserved and enhanced. Decisions to alter *floodplains*, especially *floodways* and stream channels, should be carefully planned and the resource consequences and human needs carefully balanced.

C. This chapter provides a comprehensive approach to *floodplain* management addressing natural *floodplain* functions and the federal and state *floodplain* management programs. These programs are: the *National Flood Insurance Program* (44 CRF 59-79); the State Wetlands and Waterway Program; U.S Army Corps of Engineers' Section 10 and 404 Permit Programs; and the State Coastal Zone Management Program.

D. Talbot County, by resolution, agreed to meet the requirements of the *National Flood Insurance Program* and was accepted for participation in the program on May 15, 1985. The effective date of Talbot County's Floodplain Management Ordinance was June 11, 1985. As of May 15, 1985, all *development* and *new construction* as defined herein, are to comply with these regulations.

70-2. Statutory Authorization

Talbot County is organized pursuant to Art. XI-A of the Maryland Constitution and derives its authority for planning and land use regulation from Article 25A §5, Maryland Annotated Code and certain provisions of the Land Use Article of the Maryland Annotated Code, Division I, Title 1, Subtitle 4. Pursuant to its authority, the County Council of Talbot County does hereby adopt this Chapter 70 of the Talbot County Code.

70-3. Purpose

It is the purpose of these regulations to promote the public health, safety and general welfare, and to:

A. Protect human life, health, property and welfare;

B. Encourage the use of appropriate construction practices in order to prevent or minimize future *flood* damage;

C. Minimize *flooding* of water supply and sanitary sewerage disposal systems;

D. Maintain natural drainage;

E. Reduce financial burdens imposed on the *County*, its government and its residents, by discouraging unwise design and construction of *development* in areas subject to *flooding*;

F. Minimize the need for rescue and relief efforts associated with *flooding* and generally undertaken at the general public's expense ;

G. Minimize business interruptions;

H. Minimize damage to public facilities and other utilities such as water and gas mains, electric, telephone and sewer lines, streets and bridges;

I. Educate those who build in and occupy *special flood hazard areas* in the need to assume responsibility for their actions;

J. Minimize development impacts on adjacent properties within and near *flood*-prone areas;

K. Maintain the *flood* storage and conveyance functions of *floodplains*;

L. Minimize the impact of *development* on the natural and other beneficial functions of *floodplains*;

M. Prevent *floodplain* uses and development that are either *hazardous* or environmentally incompatible; and

N. Meet the *National Flood Insurance Program's* participation requirements as set forth in the Code of Federal Regulations at 44 C.F.R. Section 59.22.

70-4. Compliance Required

These regulations apply to all *special flood hazard areas* within the unincorporated areas of Talbot County, as identified in Section 70-12, *Flood Insurance Rate Map* Use and Interpretation.

A. All *development* shall fully comply with these regulations and all other applicable regulations.

B. A permit is required for *development* in a *special flood hazard area*. Failure to obtain a permit shall be a *violation* of these regulations and shall be subject to penalties in accordance with Section 70-49, Enforcement.

C. Permits issued on the basis of plans and applications approved by the Floodplain Administrator authorize only the specific activities set forth in the approved plans and

applications. *Development* activities contrary to that authorization are a *violation* of these regulations.

70-5. Abrogation and Greater Restrictions

These regulations are not intended to repeal or abrogate any existing regulations and ordinances, including subdivision regulations, zoning ordinances, *building codes*, or any existing easements, covenants, or deed restrictions. In the event of a conflict between these regulations and any other ordinance, the more restrictive shall govern.

70-6. Interpretation

A. In the interpretation and application of these regulations, all provisions shall be:

(1) Considered as minimum requirements;

(2) Liberally construed in favor of the governing body; and,

(3) Deemed neither to limit nor repeal any other powers granted under state statutes.

B. The following publications of the *Federal Emergency Management Agency* provide useful guidance in understanding and applying these regulations. This list is intended to refer to the most recent edition of those publications. They are intended only as guidance, and do not bind or alter the authority of the Floodplain Administrator to interpret and apply these regulations.

(1) *Managing Floodplain Development in Approximate Zone A Areas: A Guide for Obtaining and Developing Base (100-Year) Flood Elevations"* (FEMA 265)

(2) *Protecting Manufactured Homes from Floods and Other Hazards: A Multi-Hazard Foundation and Installation Guide* (FEMA P-85)

(3) *Coastal Construction Manual* (FEMA 55)

(4) NFIP Technical Bulletin #1, *Openings in Foundation Walls and Walls of Enclosures*

(5) NFIP Technical Bulletin #2, *Flood Damage-Resistant Materials Requirements*

(6) NFIP Technical Bulletin #5, *Free-of-Obstruction Requirements*

(7) NFIP Technical Bulletin #9, *Design and construction guidance for breakaway walls below elevated coastal buildings*

C. Terms in this ordinance that are in italics are defined in Article VIII, Definitions.

70-7. Warning and Disclaimer of Liability

The degree of *flood* protection required by these regulations is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger *floods* can and will occur, and *flood* heights may be increased by man-made or natural causes. These regulations do not imply that land outside of the *special flood hazard areas* or uses that are permitted within such areas will be free from *flooding* or *flood* damage.

These regulations shall not create liability for Talbot County, any officer or employee thereof, the Maryland Department of the Environment (MDE) or the *Federal Emergency Management Agency* (FEMA), for any *flood* damage that results from reliance on these regulations or any administrative decision lawfully made hereunder.

70-8. Severability

Should any section or provision of these regulations be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the regulations as a whole, or any part thereof other than the part so declared to be unconstitutional or invalid.

70-9. Effective Date and Subsequent Amendments

This Floodplain Management Ordinance was enacted on March 26, 2013 with an effective date of August 5, 2013. The previously enacted Floodplain Management Ordinance, Chapter 70 of the Talbot County Code, adopted February 11, 1992, is hereby repealed. This ordinance shall be amended as required by the *Federal Emergency Management Agency*, 44 Code of Federal Regulations. All subsequent amendments to this ordinance are subject to the approval of the *Federal Emergency Management Agency* and the *Maryland Department of the Environment.*

70-10. Floodplain Administrator Designation

The Talbot County Planning Officer is hereby appointed to administer and implement these regulations and is referred to herein as the Floodplain Administrator. The Floodplain Administrator may:

A. Delegate duties and responsibilities set forth in these regulations to qualified technical personnel, plan examiners, inspectors, and other employees.

B. Enter into a written agreement or written contract with another Maryland *community* or private sector entity to administer specific provisions of these regulations, subject to the approval of the Talbot County Council. Administration of any part of these regulations by another entity shall not relieve the County of its responsibilities pursuant to the participation requirements of the *National Flood Insurance Program* as set forth in the Code of Federal Regulations at 44 C.F.R. Section 59.22.

70-11. Floodplain Administrator Duties and Responsibilities

The duties and responsibilities of the Floodplain Administrator shall include but are not limited to:

A. Review permit applications to determine whether proposed activities will be located in *special flood hazard areas*.

B. Interpret *floodplain* boundaries and provide available *base flood elevation* and *flood* hazard information.

C. Review applications to determine whether proposed activities will be reasonably safe from *flooding* and require *new construction* and *substantial improvements* to meet the requirements of these regulations.

D. Approve applications and issue permits to develop in *flood* hazard areas if these regulations' provisions have been met, or disapprove applications if these regulations' provisions have not been met.

E. Inspect permitted *development* to determine compliance or noncompliance with these regulations.

F. Review *Elevation Certificate*s and other certificates and documentation; require incomplete or deficient certificates to be corrected.

G. Submit to the *Federal Emergency Management Agency*, or require applicants to submit to the *Federal Emergency Management Agency*, data and information necessary to maintain *Flood Insurance Rate Maps*, including *hydrologic and hydraulic engineering analyses* prepared by or for Talbot County, within six months of its availability if the results indicate changes to *base flood elevation*s.

H. Determine if applications received all necessary permits from the federal, state or local agencies; in particular, permits from the *Maryland Department of the Environment* Wetlands and Waterways program.

I. Verify for any proposed *watercourse alteration* that applicants have notified adjacent communities and the *Maryland Department of the Environment* and have submitted copies of such notifications to the *Federal Emergency Management Agency*.

J. Advise applicants for *new construction* or *substantial improvement* of *structures* that are located within an area of the Coastal Barrier Resources System established by the Coastal Barrier Resources Act that federal flood insurance is not available on such *structures*; these areas are shown on *Flood Insurance Rate Maps* as Coastal Barrier Resource System Areas (CBRS) or Otherwise Protected Areas (OPA).

K. Maintain permanent administrative records, including:

(1) *Flood Insurance Studies*, *Flood Insurance Rate Maps* (including historic studies and maps and current effective studies and maps) and *Letters of Map Change*; and

(2) Supporting documentation of permit reviews, *Elevation Certificate*s and other required design certifications, *variances*, and enforcement records.

L. Enforce the regulations' provisions.

M. Advise the Talbot County Board of Appeals about the regulations' intent and, for each *variance* application, prepare a staff report and recommendation.

N. Administer the requirements for proposed work on existing *building*s, including:

(1) Determination of *substantially damaged structures* for *structures* in *flood* hazard areas that are damaged by any cause.

(2) Make reasonable efforts to notify *substantially damaged structures'* owners of the permit required for repair, rehabilitation, or reconstruction, and

(3) Prohibit non-compliant repair of *substantially damaged building*s except for temporary emergency measures necessary to secure a property to prevent additional damage.

O. Undertake other actions which may include but are not limited to:

(1) Issuing press releases, public service announcements, and other public information materials related to permit requests and repair of damaged *structures*;

(2) Coordinating with other federal, state, and local agencies to assist with substantial damage determinations;

(3) Providing damaged *structures'* owners information about the proper repair of damaged *structures* in *special flood hazard areas*; and

(4) Assisting property owners with documentation necessary to file claims for Increased Cost of Compliance coverage under *National Flood Insurance Program* flood insurance policies.

P. Notify the *Federal Emergency Management Agency* of any Talbot County boundary changes resulting from annexations by municipalities within the County; provide a map that clearly delineates the new County boundaries and the parcels annexed by the municipality.

Q. If the *Federal Emergency Management Agency* requests, deliver a report documenting the County's participation in the *National Flood Insurance Program* including the number of *building*s in the *special flood hazard area*, and the number of permits and *variances* issued for *development* in the *special flood hazard area*.

70-12. Flood Insurance Rate Map Use and Interpretation

The Floodplain Administrator shall make interpretations, where needed, as to the exact location of *special flood hazard areas*, *floodplain* boundaries, and *floodway* boundaries. The following shall apply to the use and interpretation of *Flood Insurance Rate Maps* and data:

A. The minimum basis for establishing *special flood hazard areas* and *base flood elevations* is the Talbot County *Flood Insurance Study* dated August 5, 2013, or its most recent revision, and the accompanying *Flood Insurance Rate Map(s)* and all subsequent amendments and revisions to the *Flood Insurance Rate Maps*. The *Flood Insurance Study* and *Flood Insurance Rate Maps* are available for public review at the Talbot County Office of Planning and Permits.

B. Where a certified field survey or digital topography indicates that ground elevations:

(1) Are below the *base flood elevation*, even in areas not delineated as a *special flood hazard area* on *Flood Insurance Rate Maps*, the area shall be considered a *special flood hazard area*.

(2) Are above the *base flood elevation*, and the area is mapped as a *special flood hazard area* on a *Flood Insurance Rate Map*, the area shall be regulated as a *special flood hazard area* unless the applicant obtains a *Letter of Map Change* that removes the area from the *special flood hazard area*.

C. Where a *special flood hazard area* is identified on the *Flood Insurance Rate Map*, but *base flood elevations* and *floodways* have not been identified by the *Federal Emergency Management Agency*, the Floodplain Administrator may:

(1) Provide the best available data to determine the *base flood elevation*, or,

(2) Require an applicant to obtain information available from federal, state, or other approved sources, or

(3) If reliable data is not available, require an applicant for *development* within the *special flood hazard area* to document the *base flood elevation* and the elevation of the site using accepted engineering practices. Appropriate methods include one of the following:

(a) Simplified engineering methods, as approved by the Floodplain Administrator, may be used to identify the *base flood elevation* for single-lot residential development or other development not requiring subdivision or a *major site plan*.

(b) For subdivision of land or *major site plans*, a *hydrologic and hydraulic engineering analysis* shall be submitted to identify *base flood elevations*, such analyses shall be performed in accord with *Maryland Department of the Environment* and *Federal Emergency Management Agency* requirements and specifications.

D. *Base flood elevations* and designated *floodway* boundaries on *Flood Insurance Rate Maps* and in *Flood Insurance Studies* shall take precedence over any other sources, even if such sources show reduced *floodway* widths and/or lower *base flood elevations*, unless the applicant obtains a *Letter of Map Change* that removes the area from the *special flood hazard area,* revises the *base flood elevation* or moves the *floodway* boundary.

E. Other data sources shall be used if they result in increased *base flood elevations* and/or larger *floodway* areas than are shown on *Flood Insurance Rate Maps* and in *Federal Emergency Management Agency Flood Insurance Studies*.

F. If a preliminary *Flood Insurance Rate Map* and/or a preliminary *Flood Insurance Study* has been provided by the *Federal Emergency Management Agency*:

(1) Before a *Federal Emergency Management Agency* Letter of Final Determination is issued,

(a) Preliminary *flood* hazard data shall be deemed the best available data as in paragraph (C) of Section 70-12, *Flood Insurance Rate Map* Use and Interpretation, and shall be used for locations where *base flood elevations* and/or *floodway* areas are not provided on the effective *Flood Insurance Rate Maps*.

(b) Preliminary *flood* hazard data may be used where the preliminary *base flood elevations* or *floodway* areas exceed the *base flood elevations* and/or designated *floodway* widths in existing Federal Emergency Management Agency *flood* hazard data.

(c) Such preliminary data may be subject to change and/or appealed to the *Federal Emergency Management Agency*.

(2) After a Letter of Final Determination is issued by the *Federal Emergency Management Agency*, the preliminary *flood* hazard data shall be used and shall replace the earlier *Federal Emergency Management Agency flood* hazard data for administering these regulations.

ARTICLE II REQUIREMENTS IN ALL FLOOD HAZARD AREAS

70-13. Application of Requirements

The requirements of this section apply to all *development* proposed within *special flood hazard areas* identified in Section 70-12, *Flood Insurance Rate Map* Use and Interpretation.

70-14. Subdivision and Development

A. In all *flood zones,* subdivision and development proposals shall:

(1) Be consistent with the need to minimize flood damage and subject to all applicable standards in these regulations.

(2) Have utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage.

(3) Have adequate drainage paths provided to reduce exposure to flood hazards and to guide floodwaters around and away from proposed *structures* and utilities.

(4) If wholly or partially in *flood* hazard areas where *base flood elevation* data are not shown on the *Flood Insurance Rate Maps*, be supported by determinations of *base flood elevations* as required in paragraph (C) of Section 70-12, *Flood Insurance Rate Map* Use and Interpretation.

B. In all *special flood hazard areas, development* may not occur where alternative locations exist due to the inherent hazards and risks involved. Before a permit is issued, the applicant shall demonstrate that new *structures* cannot be located out of the *floodplain* and that encroachments onto the *floodplain* are minimized.

C. In *special flood hazard areas* of *nontidal waters,* proposed subdivisions shall:

(1) Place proposed *building* pads outside of the *special flood hazard area.*

(2) Preserve and dedicate the *flood* hazard area to natural buffer areas, open space, recreation, and similar compatible uses by deed restriction, restrictive covenants, or donation to a land trust. Steep slopes and forested areas adjacent to *watercourses* shall be given high priority for preservation.

(3) Place the driving surface of new, public access roads at or above the *base flood elevation.*

D. Proposed subdivision in tidal water *special flood hazard areas* shall locate new lots on the highest natural land available before lower elevation lots are platted to the maximum extent possible. Clustering *development* outside of the *floodplain* and preserving the low-lying land and forested areas in natural vegetation should be pursued to the maximum extent possible.

70-15. Water Supply and Sanitary Sewage System Protection

A. New and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems.

B. New and replacement sanitary sewerage systems shall be designed to minimize or eliminate floodwater infiltration into systems and discharges from systems into floodwaters.

C. On-site waste disposal systems shall be designed and located to avoid floodwater infiltration impairment and contaminated discharges during *flooding*.

70-16. Building and Structure Protection

New *structures* and *substantial improvement* of existing *structures* located, in whole or in part, in a *special flood hazard area* shall:

A. Be designed (or modified) and constructed to safely withstand *flood* loads reaching the *flood protection elevation* or the elevation required by the *building code*, whichever is greater. Structures shall adhere to *building code* standards to ensure that the construction shall provide a complete load path transferring all loads from their origin through to the foundation.

Structures and their foundations shall be designed, connected and anchored to resist flotation, collapse or lateral movement due to flood-induced structural loads and stresses.

B. Be constructed by methods and practices that minimize *flood* damage, as specified in the *building code.*

C. Use *flood damage-resistant materials* below the elevation of the *lowest floor* required in Section 70-28, Residential Structures, or 70-29, Nonresidential Structures (for A Zones), or Section 70-35, Residential and Nonresidential Structures (for V Zones and *Coastal A Zones*).

D. Locate electrical systems, equipment and components, and mechanical, heating, ventilating, air conditioning, and plumbing appliances, plumbing fixtures, duct systems, and other service equipment at or above the *lowest floor* elevation required in Section 70-28, Residential Structures, or 70-29, Nonresidential Structures (A Zones), or Section 70-35, Residential and Nonresidential Structures (V Zones and *Coastal A Zones*). Electrical wiring is permitted below the *lowest floor* elevation provided it conforms to the *building code's* wet location provisions.

E. Locate new electric panel boards at least two feet above the *flood protection elevation.*

F. If located in *Coastal A Zone,* comply with the specific requirements of:

(1) Article V for *new construction* and placement of new *manufactured homes*; or

(2) Article IV for *substantial improvements* (including repair of *substantial damage*) and replacement of *manufactured homes.*

G. Comply with the requirements of the most restrictive designation if the site occupies more than one *flood zone* designation (A Zone, designated *floodway*, *Coastal A Zone*, V Zone).

70-17. Fill Placement

A. Disposal of fill of any type, including but not limited to soils, rock, rubble, construction debris, woody debris, and trash, shall not be permitted in *special flood hazard areas.*

B. In *Coastal A Zones* or *coastal high hazard areas* (V Zones):

(1) Fill placement for the purpose of elevating *building*s is prohibited.

(2) Minor grading, and the placement of minor quantities of fill, not to exceed 50 cubic yards, shall be permitted for landscaping and drainage purposes under and around *building*s and for support of parking surfaces, pool decks, patios and walkways.

(3) Grading and the use of fill shall be minimized to the greatest extent possible.

(4) Fill may also be used for nonstructural shoreline stabilization in accordance with the Maryland Living Shoreline Protection Act of 2008 and *Maryland Department of the Environment* regulations implementing this Act. Fill used for this purpose may exceed fifty cubic yards and shall comply with Section 70-17.D below.

C. Fill placed to raise the ground level to elevate *structures* in *special flood hazard areas* (A Zones) that are not *Coastal A Zones* or *coastal high hazard areas* (V Zones) shall comply with the *floodway* requirements in Section 70-26.A and B, and shall:

(1) Consist of soil or rock only;

(2) Extend laterally from the *building* footprint to provide for adequate access; the Floodplain Administrator may seek advice from the State Fire Marshal's Office and/or the local fire services agency;

(3) Comply with *building code* requirements and be placed and compacted to provide stability under *flooding* conditions and to resist erosion, scour, and settling;

(4) Be sloped no steeper than one (1) vertical to two (2) horizontal feet, unless approved otherwise by the Floodplain Administrator;

(5) Be protected from erosion associated with expected velocities during the *base flood*. Unless approved by the Floodplain Administrator, fill slopes shall be vegetated if expected velocity is less than five feet per second, and protected by other means certified by a *licensed* engineer if expected velocity is five feet per second or more; and

(6) Be designed to have adequate drainage and no increase in flows to adjacent properties.

D. Any fill in a *special flood hazard area* that would raise a parcel or structure above the *base flood elevation* requires a *Conditional Letter of Map Revision Based on Fill (CLOMR-F)* from the *Federal Emergency Management Agency* before construction, and a *Letter of Map Revision Based on Fill (LOMR-F)* from *Federal Emergency Management Agency* after construction is complete.

E. In *special flood hazard areas* of *nontidal waters*, for proposed *development* that includes fill, a hydraulically-equivalent excavation volume is required. Excavations shall be designed to drain freely.

70-18. Historic Structures

Historic structure repair, alteration, addition, rehabilitation, or other improvement shall be exempt from the requirements of this chapter, provided that the proposed work will not preclude the *structure*'s continued designation as a *historic structure*. The Floodplain Administrator may require documentation of a *structure*'s continued eligibility for designation as a *historic structure*.

70-19. Manufactured Homes

A. New *manufactured homes* shall not be placed or installed, and existing *manufactured homes* shall not be replaced or substantially improved, including repair after *substantial damage*, in *floodways* or *coastal high hazard areas* (V Zones).

B. In Coastal A areas, new *manufactured homes* are prohibited. Existing *manufactured homes* may be replaced, repaired, or *substantially improved*, including repair after *substantial damage*.

C. In other *special flood hazard areas*, new or replacement *manufactured homes* are permitted, and *manufactured homes* may be *substantially improved*, subject to all requirements of this chapter.

D. Where permitted, *manufactured homes* that are new, replaced or *substantially improved* (including repair after *substantial damage*) shall:

(1) Be elevated on a permanent, reinforced foundation in accordance with Article IV or V;

(2) Be installed in accordance with the *building code* and manufacturer's anchor and tie-down requirements and installation instructions and specifications; and

(3) Have any *enclosures below the lowest floor* of the elevated *manufactured home*, including those that are surrounded by rigid skirting or other material attached to the frame or foundation, comply with Article IV or V.

E. Owners of *manufactured home* parks or subdivisions that are partially or fully within a *special flood hazard area* must file an evacuation plan with the local emergency management agency.

F. New *manufactured home* parks or subdivisions in nontidal *floodplains* shall be designed and provided with an access road elevated above the *base flood elevation*.

70-20. Recreational Vehicle Protection

A. *Recreational vehicles* shall:

(1) Be fully licensed and ready for highway use in accordance with B below; or

(2) Be on a site for less than seven consecutive days subject to an approved Use Certificate in accordance with Section 190-100 and 190-119 of the Talbot County Zoning, Subdivision and Land Development Ordinance.

B. A *recreational vehicle* is ready for highway use if it is on its wheels and jacking system, is attached to the site only by quick-disconnect-type utilities and securing devices, and has no permanently attached additions.

70-21. Critical and Essential Facilities Protection

A. New *critical and essential facilities* shall be located outside *coastal high hazard areas* (V Zones).

B. If located in *special flood hazard areas* other than *coastal high hazard areas*, they shall be elevated to the higher of the elevation required by these regulations plus one foot, the elevation required by the *building code*, or the elevation of the 0.2 percent probability (500-year) *flood*.

70-22. Temporary Structures and Temporary Storage Protection

A. An application for a *temporary structure* or for temporary storage of any goods, material and equipment shall specify its duration.

B. *Temporary structures* and temporary storage in *floodways* shall meet the requirements of Section 70-26(A).

C. *Temporary structures* shall:

(1) Be designed and constructed to prevent flotation, collapse or lateral movement resulting from the base flood's hydrodynamic loads and hydrostatic loads;

(2) Have electric service installed in compliance with the electric code; and

(3) Comply with all other requirements of the applicable federal, state and local permit authorities.

D. Temporary storage shall not include *hazardous materials*.

70-23. Gas or Liquid Storage Tank Protection

A. Underground tanks in *special flood hazard areas* shall be anchored to prevent, during the *base flood*, flotation, collapse or lateral movement resulting from hydrostatic loads, including the effects of buoyancy.

B. Above-ground tanks in *special flood hazard areas* shall be anchored to a supporting structure and elevated to or above the *flood protection elevation*, or shall be anchored or otherwise designed and constructed to prevent, during the *base flood,* flotation, collapse, or lateral movement resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy.

C. In *special flood hazard areas*, tank inlets, fill openings, outlets and vents shall be:

(1) At or above the *base flood elevation* or fitted with covers designed to prevent the floodwater inflow or tank content outflow during conditions of the *base flood*; and

(2) Anchored to prevent, during the *base flood,* lateral movement resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy.

70-24. Functionally Dependent Use Protection

F*unctionally dependent uses* must conform to these regulations; otherwise they shall be approved only by *variances* issued pursuant to Article VI. If approved, *functionally dependent uses* shall be protected by methods that minimize *flood* damage during the *base flood*, including measures to allow floodwaters to enter and exit, use of *flood damage-resistant materials*, and elevation of electric service and equipment to the extent practical.

ARTICLE III REQUIREMENTS IN FLOOD HAZARD AREAS OF NONTIDAL WATERS

70-25. Buffers along Non-Tidal Waters

Buffers shall be maintained along the banks of all *non-tidal waters* in accordance with the Zoning, Subdivision and Land Development Ordinance, Section 190-123, Buffers—Streams and Non-Tidal Wetlands—Non-Critical Area.

70-26. Development that Affects Flood-Carrying Capacity of Nontidal Waters

A. Development in Designated Floodways

Floodways shall be preserved to carry the *base flood* discharge. New *development* shall be located outside the *floodway* unless there is no practical alternative on site. Proposed *development* in a *designated floodway* may be permitted only if:

(1) The applicant has been issued a permit by *Maryland Department of the Environment*; and

(2) The permit application submitted to the Floodplain Administrator includes an evaluation of alternatives to such encroachment, including other site uses and/or use of other portions of the site, and options to minimize the encroachment; and,

(3) The applicant has developed *hydrologic and hydraulic engineering analyses* and technical data prepared by a *licensed* engineer that reflect such changes and:

(a) Document that the proposed activity will not result in any increase in the *base flood elevation*; or

(b) Document that the proposed activities will result in an increase in the *base flood elevation*, and the applicant has obtained a *Conditional Letter of Map Revision* or *Letter of Map Revision* from the *Federal Emergency Management Agency* approving the increase in *base flood elevation*. Submittal requirements and fees shall be the applicant's responsibility.

(4) Fences, e.g. two-wire fences that do not block the water flow or trap debris, may be permitted without a *Maryland Department of the Environment* permit, an alternative evaluation or an engineering analysis.

B. Development in Areas with Base Flood Elevations without Designated Floodways

Development in *special flood hazard areas* of *nontidal waters* with *base flood elevations* and without designated *floodways* may be permitted only if the following conditions are met:

(1) The applicant has received a permit from *Maryland Department of the Environment.*

(2) The permit application submitted to the Floodplain Administrator includes *hydrologic and hydraulic engineering analyses* and technical data reflecting the proposed activity;

(3) The analyses in paragraph (2) above are in a format required by the *Federal Emergency Management Agency* for a *Conditional Letter of Map Revision* or *Letter of Map Revision.* Submittal requirements and fees shall be the applicant's responsibility; and,

(4) The analyses demonstrate that the proposed development's cumulative effect, when combined with all other existing and potential flood hazard area encroachments, will not increase the *base flood elevation* more than one foot at any point.

C. Construction of Roads, Bridges, Culverts, Dams and In-Stream Ponds

Road, bridge, culvert, dam, and in-stream pond construction in *nontidal waters* shall comply with this section. The applicant must receive a permit from the *Maryland Department of the Environment.*

ARTICLE IV REQUIREMENTS IN FLOOD HAZARD AREA (A ZONES) OTHER THAN COASTAL HIGH HAZARD AREAS (V ZONES) AND COASTAL A ZONES

70-27. General Requirements

This section's requirements shall:

A. Apply in *special flood hazard areas* that are not identified as *coastal high hazard areas* (V Zones) and *Coastal A Zones*. These *flood* hazard areas, referred to collectively as "A Zones," include *special flood hazard areas* along *nontidal waters*, landward of *coastal high hazard areas* (V Zones), and landward of *Coastal A Zones* (if delineated).

B. Apply to all *development, new construction,* and *substantial improvements* (including repair of *substantial damage*).

70-28. Residential Structures and Residential Portions of Mixed Use Structures

New residential *structures* and residential portions of mixed use *structures*, and *substantial improvement* of existing residential *structures* and residential portions of mixed use *structures,* shall comply with Article II and this Article. See also Section 70-30, Lateral Additions.

A. Elevation Requirements

(1) *Lowest floors* shall be elevated to or above the *flood protection elevation.*

(2) In *areas of shallow flooding* (Zone AO), the *lowest floor* (including *basement*) shall be elevated at least as high above the *highest adjacent grade* as the *flood* depth number specified in feet on the *Flood Insurance Rate Maps* plus two (2) feet, or at least four (4) feet if a *flood* depth number is not specified.

(3) *Enclosures below the lowest floor* shall meet the requirements of paragraph 70-28(B), Enclosures below the Lowest Floor.

B. Enclosures Below the Lowest Floor

Enclosures below the lowest floor shall:

(1) Be used solely for vehicle parking, *building* access, crawl/under floor spaces, or limited storage.

(2) Be constructed using *flood damage-resistant materials.*

(3) Be provided with *flood openings* which shall meet the following criteria:

(a) There shall be a minimum of two *flood openings* on different sides of each enclosed area; if a *building* has more than one *enclosure below the lowest floor*, such enclosures shall each have at least two *flood openings* on two different exterior walls.

(b) Each *flood opening* bottom shall be one foot or less above the higher of the interior floor or grade, or the exterior grade, immediately below the opening.

(c) Any louvers, screens or other covers for *flood openings* shall allow automatic flow of floodwaters into and out of the enclosed area.

(d) If installed in doors, *flood openings* that meet requirements of paragraphs (a) through (c) above are acceptable; however, doors without incorporated *flood openings* do not meet this section's requirements.

(e) May be non-engineered openings with at least one square inch for each square foot of enclosed area, or may be engineered *flood openings* as defined in Article VIII.

70-29. Nonresidential Structures and Nonresidential Portions of Mixed Use Structures

New nonresidential *structures* and nonresidential portions of mixed use *structures*, and *substantial improvement* of nonresidential *structures* and nonresidential portions of mixed use *structures,* shall comply with Article II and this Article. See also Section 70-30, Lateral Additions.

A. Elevation Requirements

Elevated *structures* shall:

(1) Have the *lowest floor* (including *basement*) elevated to or above the *flood protection elevation*; or

(2) In *areas of shallow flooding* (Zone AO), have the *lowest floor* (including *basement*) elevated at least as high above the *highest adjacent grade* as the *Flood Insurance Rate Map flood* depth number plus two (2) feet, or at least four (4) feet if a *flood* depth number is not specified; and

(3) Have *enclosures below the lowest floor*, if any, that comply with Section 70-28.B, Enclosures Below the Lowest Floor; or

(4) If proposed to be elevated on fill, meet the limitations in Section 70-17, Fill Placement.

B. Floodproofing Requirements

(1) *Floodproofing* of new nonresidential *buildings* is not allowed in *nontidal waters* (COMAR 26.17.04.11(B)(7)) and *Coastal A Zones.*

(2) *Floodproofing* is permitted for *substantial improvement* of nonresidential *buildings* in all *A zones,* including *Coastal A Zones.*

(3) If *floodproofing* is proposed, *structures* shall:

(a) Be designed to be dry *floodproofed* such that the *structure* is watertight with walls and floors substantially impermeable to water to the level of the *flood protection elevation*, or

(b) If located in an *area of shallow flooding* (Zone AO), be dry *floodproofed* at least as high above the *highest adjacent grade* as the *flood* depth number specified on the *Flood Insurance Rate Maps* plus three (3) feet, or at least five (5) feet if a *flood* depth number is not specified; and

(c) Have structural components capable of resisting hydrostatic and hydrodynamic loads and buoyancy effects;

(d) Have *floodproofing* measures that are designed to consider flood-related hazard characteristics; frequency, depth and duration of *flooding*; rate of rise and fall of floodwater; soil characteristics; flood-borne debris; at least 12 hours of *flood* warning time from a credible source; and time necessary to implement any human intervention measures;

(e) Have at least one door above the applicable *flood* elevation that allows human ingress and egress during *flooding* conditions;

(f) Have an operations and maintenance plan filed with local emergency management officials specifying the owner/occupant's responsibilities to monitor *flood* potential; the location of shields, doors, closures, tools, or other goods required for implementation; maintenance of such goods; methods of installation; and periodic inspection; and

(g) Be certified with a *Floodproofing Certificate* by a *licensed designer* stating that the design and construction methods meet this section's requirements. The *Floodproofing Certificate* shall be submitted with the construction documents.

70-30. Lateral Additions

A. Any lateral addition proposed for a *structure* that was constructed after May 15, 1985 shall comply with Article II and this Article.

B. In *nontidal waters* all lateral additions shall comply with Article II and this Article and:

(1) If the addition is structurally connected to the *base building*, the requirements of paragraph (C) below apply.

(2) If the addition has an independent foundation and is not structurally connected to the *base building;* and the common wall with the *base building* is modified by only one doorway per story, with a width not exceeding 36 inches; the *base building* is not required to be brought into compliance.

C. For lateral additions that are structurally connected to the *base building*:

(1) If the addition combined with other proposed *base building* repairs, alterations, or modifications constitutes *substantial improvement*, the *base building* and the addition shall comply with Article II and this Article.

(2) If the addition constitutes *substantial improvement*, the *base building* and the addition shall comply with Article II and this Article.

D. For lateral additions with independent foundations that are not structurally connected to the *base building* and the common wall with the *base building* is modified by only one doorway

per story, with a width not exceeding 36 inches, the *base building* is not required to be brought into compliance.

70-31. Accessory Structures

A. *Accessory structures* shall be no larger than 900 square feet in floor area.

B. *Accessory structures* shall comply with the elevation requirements and other requirements of Section 70-28, Residential Structures, or the *floodproofing* requirements of 70-29, Nonresidential Structures, or shall:

(1) Be useable only for parking of vehicles or limited storage of household or yard goods, and not including installation of mechanical equipment;

(2) Be constructed with *flood damage-resistant materials* below the *base flood elevation*;

(3) Offer the minimum resistance to floodwater flow;

(4) Be anchored to prevent flotation;

(5) Have electrical service and mechanical equipment elevated above the *base flood elevation*; and

(6) Have *flood openings* that meet the requirements of Section 70-28.B, Residential Structures.

C. For *accessory structures* 300 square feet or larger in floor area that are below the *base flood elevation*, a *Declaration of Land Restriction (Nonconversion Agreement)* shall be recorded on the property deed before a *Certificate of Occupancy* is issued.

70-32. Watercourse Alteration

For proposed *development* that involves *watercourse alteration* not subject to paragraph 70-26.B ("Development in Areas with Base Flood Elevations without Designated Floodways"), unless waived by *Maryland Department of the Environment*, the applicant shall develop *hydrologic and hydraulic engineering analyses* and technical data reflecting such changes, including the *floodway* analysis required in Section 70-26.A ("Development in Designated *Floodways")*, and submit this data to the Floodplain Administrator and to the *Federal Emergency Management Agency*. The analyses shall be prepared in a format required by the *Federal Emergency Management Agency* for a *Conditional Letter of Map Revision* or *Letter of Map Revision*. Submittal requirements and fees shall be the responsibility of the applicant.

Watercourse alteration may be permitted upon the applicant's submission of the following:

A. A description of the extent of the proposed *watercourse alteration* or relocation.

B. A *licensed* engineer's certification that the *watercourse's* flood-carrying capacity will not be decreased;

C. Evidence that adjacent communities, the U.S. Army Corps of Engineers, and *Maryland Department of the Environment* have been notified of the proposal, and evidence that such notifications have been submitted to the *Federal Emergency Management Agency*; and

D. Evidence that the applicant shall be responsible for maintenance of the altered or relocated portion of the *watercourse* so that the *flood*-carrying capacity will not be diminished. The Floodplain Administrator may require the applicant to enter into an agreement with Talbot County specifying the maintenance responsibilities; if an agreement is required, the permit shall be conditioned to require that the agreement be recorded on the property's deed which shall be binding on future owners.

ARTICLE V COASTAL HIGH HAZARD AREA (V ZONE) AND COASTAL A ZONE REQUIREMENTS

70-33. General Requirements

The requirements of this section shall:

A. Apply in flood hazard areas identified as *coastal high hazard areas* (V Zones) and *Coastal A Zones*.

B. Apply to all *development, new construction,* and *substantial improvements* (including repair of *substantial damage*).

Exception: In *Coastal A Zones*, the requirements of Article IV shall apply to *substantial improvements* (including repair of *substantial damage*).

70-34. Structure Location and Site Preparation

A. Fill placement for the purpose of elevating *building*s is prohibited.

B. *Building*s shall be located landward of the reach of mean high tide.

C. Use of fill shall comply with Section 70-17, Fill Placement.

70-35. Residential and Nonresidential Structures

New *structures* and *substantial improvement* (including repair of *substantial damage*) of existing *structures* shall comply with this section and Article II.

A. Design Certification

The application shall include a certification prepared by a *licensed designer* that the design and construction methods meet the requirements of paragraphs B, C and D below, and the *building code*.

B. Foundations

(1) *Structures* shall be supported on pilings or columns and shall be adequately anchored to such pilings or columns. Pilings shall have adequate soil penetrations to resist the combined wave and wind loads (lateral and uplift). Water loading values used shall be those associated with the *base flood*. Wind loading values shall be those required by applicable *building codes*. Pile embedment design shall include the effects of decreased resistance capacity from soil scouring.

(2) Slabs, pools, pool decks and walkways shall be located and constructed to be structurally independent of *structures* and their foundations to prevent transfer of *flood* loads to the *structures* during conditions of *flooding*, scour, or erosion from wave-velocity flow conditions, and shall be designed to minimize debris impacts to adjacent properties and public infrastructure.

C. Elevation Requirements

(1) The bottom of the lowest horizontal structural member that supports the *lowest floor* shall be above the *flood protection elevation*.

(2) *Basement* floors below grade on all sides are prohibited.

(3) The space below an elevated *building* shall either be *free-of-obstruction* or, if enclosed by walls, shall meet the requirements of paragraph (D) below.

D. Enclosures Below the Lowest Floor

(1) *Enclosures below the lowest floor* shall be used solely for vehicle parking, *building* access or limited storage.

(2) *Enclosures below the lowest floor* shall be less than 300 square feet in area (exterior measurement to outside of finish materials).

(3) Walls and partitions are permitted below the elevated floor, provided that such walls and partitions are designed to break away under *flood* loads and are not part of the structural support of the *structure*.

(4) No electrical, mechanical or plumbing system components shall be below the *lowest floor* except where necessary for connection to off-site utilities. Electrical, mechanical, and plumbing system components shall not be mounted on or penetrate through walls that are designed to break away under flood loads.

(5) Walls intended to break away under *flood* loads shall be constructed with insect screening or open lattice, or shall be designed to break away or collapse without causing collapse, displacement or other structural damage to the elevated portion of the building or

supporting foundation system. Such walls, framing and connections shall have a design loading resistance of not less than 10 pounds per square foot and no more than 20 pounds per square foot; or

(6) Where wind loading values of the *building code* exceed 20 pounds per square foot, the applicant shall submit a *licensed designer's* certification that:

(a) The walls and partitions below the *lowest floor* will function as break away walls.

(b) The elevated portion of the *building* and supporting foundation system have been designed to withstand the effects of wind and *flood* loads simultaneously acting 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 the *building code*.

(c) In *Coastal A Zones*, walls below the *lowest floor* shall have *flood openings* that meet the requirements of Section 70-28, Residential Structures, paragraph B(3).

70-36. Lateral Additions

A. All lateral additions proposed for a *structure* that was constructed after May 15, 1985, shall comply with Article II and this Article.

B. For lateral additions, whether structurally connected or not structurally connected to the *base building*:

(1) If the addition combined with other proposed repairs, alterations, or modifications of the *base building* constitutes *substantial improvement*, the *base building* and the addition shall comply with Article II and this Article.

(2) If the addition constitutes *substantial improvement*, the *base building* and the addition shall comply with Article II and this Article. [Note: The *base building* is required to comply; otherwise it is an obstruction that does not comply with the *free-of-obstruction* requirement that applies to the elevated addition per Section 70-35, Residential and Nonresidential Structures, paragraph C.3].

70-37. Accessory Structures

A. *Accessory structures* shall be no larger than 300 square feet in floor area.

B. *Accessory structures* shall comply with the elevation requirements and other requirements of Section 70-35, Residential and Nonresidential Structures, or, if not elevated, shall:

(1) Be useable only for vehicle parking or limited storage of household or yard goods, and not including installation of mechanical equipment;

(2) Be constructed with *flood damage-resistant materials* below the *base flood elevation*;

(3) Offer the minimum resistance to floodwater flow;

(4) Be anchored to prevent flotation;

(5) Have electrical service and mechanical equipment elevated above the *base flood elevation*; and

(6) If larger than 100 square feet in size, walls shall meet the requirements of Section 70-35, Residential and Nonresidential Structures, paragraphs D(3) through (6); and if located in *Coastal A Zones*, walls shall have *flood openings* that meet the requirements of Section 70-28, Residential Structures, paragraph B.3.

C. For *accessory structures* 300 square feet or larger in floor area that are below the *base flood elevation*, a *Declaration of Land Restriction (Nonconversion Agreement)* shall be recorded on the property deed before a *Certificate of Occupancy* is issued. *Accessory structures* larger than 300 square feet in floor area and below the *base flood elevation* are not permitted unless a *variance* is granted as provided in Article VI.

70-38. Other Structures and Development

Note: NFIP Technical Bulletin #5, "*Free-of-Obstruction Requirements*," provides helpful guidance in applying these requirements.

A. Decks and Patios

In addition to all other requirements of the *building code,* decks and patios shall be located, designed, and constructed to comply with the following:

(1) A deck structurally attached to a *structure* shall have its lowest horizontal structural member above the *flood protection elevation.* Any supporting members that extend below the *flood protection elevation* shall comply with the foundation requirements applicable to the *structure.* The *structure* shall be designed to accommodate any increased loads caused by the deck.

(2) A deck or patio located below the *flood protection elevation* shall be structurally independent from *structures* and their foundation systems, and shall be designed and constructed either to remain intact and in place during *base flood* conditions or to break apart into small pieces that will not cause structural damage to adjacent elevated *structures.*

(3) A deck or patio with vertical thickness of more than 12 inches or constructed with more than the minimum fill necessary for site drainage shall provide an analysis by a *licensed*

designer demonstrating no harmful diversion of floodwaters or wave run-up and wave reflection that would increase damage to elevated *structures*.

(4) A deck or patio may be approved without analysis of the impact on diversion of floodwaters, wave run-up or wave reflection, provided that the deck or patio:

(a) Has a vertical thickness of 12 inches or less; and,

(b) Is at natural grade or on fill material that is similar to local soils; and,

(c) Uses fill in the minimum amount necessary for site drainage.

B. Other Development

Other *development* activities shall be permitted only if located outside the footprint of, and not structurally attached to, *structures*. The permit application for such development must provide an analysis performed by a *licensed designer* demonstrating no harmful diversion of floodwaters or wave run-up and wave reflection onto adjacent elevated *structures*. Other *development* includes but is not limited to:

(1) Bulkheads, seawalls, retaining walls, revetments, and similar erosion control structures;

(2) Solid fences, privacy walls, and fences prone to trapping debris, unless designed and constructed to fail under *base flood* conditions; and

(3) Mounded septic systems.

ARTICLE VI ADMINISTRATIVE APPEALS AND VARIANCES

70-39. Administrative Appeals

Persons aggrieved by a final order or decision of the Floodplain Administrator may file an administrative appeal with the Board of Appeals in accord with Chapter 20 of the Talbot County Code.

70-40. General Provisions for Variances

A. The Talbot County Board of Appeals shall have the power to consider and authorize or deny *variances* from the strict application of these regulation's requirements. A *variance* shall be approved only if it is not contrary to the public interest and where, owing to a lot or parcel's special conditions, a literal enforcement of the provisions of these regulations, an unnecessary hardship would result.

B. Upon consideration of these regulation's purposes, the individual circumstances, and this section's considerations and limitations, the Board of Appeals may attach such conditions to *variances* as it deems necessary to further these regulation's purposes.

C. The Board of Appeals shall notify, in writing, any applicant to whom a *variance* is granted to construct or substantially improve a *structure* with its *lowest floor* below the elevation required by these regulations that the *variance* is to the *floodplain* management requirements of these regulations only, and that the cost of federal *flood* insurance will be commensurate with the increased risk, with rates up to $25 per $100 of insurance coverage.

D. A record of all *variance* actions, including justification for issuance shall be maintained pursuant to Section 70-11, Duties and Responsibilities of the Floodplain Administrator, paragraph (K) of these regulations.

70-41. Variance Applications

A. *Variance* applications shall be submitted in accordance with the procedures in Section 70-44, Application Procedures, and Chapter 20 of the Talbot County Code.

B. If the *variance* application seeks to allow the *lowest floor* (A Zones) or bottom of the lowest horizontal structural member (V Zones and *Coastal A Zones*) of a *structure* below the applicable minimum elevation, the application shall include a statement signed by the owner that, if granted, the *variance* conditions shall be recorded on the property's deed.

70-42. Variance Considerations

The Floodplain Administrator shall request comments on *variance* applications from the *Maryland Department of the Environment* and shall provide to the Board of Appeals any comments received.

In considering *variance* applications, the Board of Appeals shall review the evidence provided and make findings of fact on the following factors and other factors that the Board finds relevant.

A. Impact on neighboring properties from storm-driven debris.

B. Potential increased erosion effects.

C. Impact of potential flood damage on the proposed *development* and its contents (if applicable) and the owner.

D. Impact on community services.

E. Potential to locate the development in a less threatened position on the site.

F. For waterfront development, whether the proposed development is a *functionally dependent use*.

G. Compatibility of the proposed use with existing and anticipated *development*.

H. Relationship to the comprehensive plan.

I. Property access during flooding for passenger vehicles and emergency vehicles.

J. Floodwater heights, velocity, duration, rate of rise, and sediment transport and the effects of wave action, if applicable, expected at the site.

K. Impacts on government services and infrastructure during and after *flood* conditions.

L. Comments and testimony provided by the *Maryland Department of the Environment* and other parties, if any is received.

70-43. Variance Limitations

The Board of Appeals may approve a *variance* request only upon:

A. A showing of good and sufficient cause.

B. A determination that failure to grant the *variance* would result in unwarranted hardship due to the property's physical characteristics. Increased cost or inconvenience in meeting these regulation's requirements does not constitute an unwarranted hardship to the applicant. An unwarranted hardship exists if without a variance, an applicant would be denied reasonable and significant use of the entire parcel or lot for which the variance is requested.

C. A determination that the granting of a *variance* for *development* within any designated *floodway*, or *flood* hazard area with *base flood elevations* but no designated *floodway*, will not result in increased *flood* heights beyond that which is allowed in these regulations.

D. A determination that the granting of a *variance* will not result in additional threats to public safety; extraordinary public expense, nuisances, fraud or victimization of the public, or conflict with existing local laws.

E. A determination that the *structure* or other *development* is protected by methods to minimize *flood* damages.

F. A determination that the *variance* is the minimum necessary to afford relief, considering the *flood* hazard.

ARTICLE VII ADMINISTRATION AND ENFORCEMENT

70-44. Application Procedures

A. Permit and *variance* applications shall be made by the property owner or the owner's authorized agent (hereafter the applicant).

B. Application forms and submittals

(1) The Floodplain Administrator shall publish permit and *variance* application forms and a checklist of required information.

(2) The Floodplain Administrator may request additional information for an application if necessary to ensure compliance with these regulations.

(3) Applications must be accompanied by required fees in accord with the fee schedule established by the County Council.

C. The Floodplain Administrator shall review an application for *development* in *special flood hazard areas* or *variances* to determine its completeness. The applicant shall be notified of incompleteness or additional required information within 15 days of the application's receipt. The applicant shall be notified in writing, specifying the deficiencies, listing additional required information, and stating that no further action on the application will be taken until the additional material is received by the Floodplain Administrator.

70-45. Special Flood Hazard Area Permit Requirements

A. Application Contents

Applications for *special flood hazard area development* shall include the following information, and all items on the checklist provided by the Floodplain Administrator:

(1) Site plans drawn to scale showing the nature, location, dimensions, and existing and proposed topography of the proposed development site, and the location of existing and proposed *structures*, excavation, filling, storage of materials, drainage facilities, and other proposed activities.

(2) Pre-disturbance grade elevation where *structures* are proposed referenced to the datum on the *Flood Insurance Rate Maps*.

(3) S*pecial flood hazard areas*, designated *floodway* boundaries, *flood zones*, *base flood elevations*, and *flood protection setbacks*.

(4) *Base flood elevations*, for subdivisions plans and major *site plans*, in *special flood hazard areas* where *base flood elevations* are not shown on the *Flood Insurance Rate Maps*.

(5) For proposed *structures*, including *substantial improvement* and repair of *substantial damage*, and placement and replacement of *manufactured homes*:

(a) Proposed *lowest floor* elevation, including the *basement*, referenced to the *Flood Insurance Rate Maps' datum,* and a signed *Elevation Certificate Submission Agreement*.

(b) The signed *Declaration of Land Restriction (Nonconversion Agreement)* that shall be recorded on the property deed if the application includes an *enclosure below the lowest floor*, including any crawl/under floor space more than four (4) feet in height.

(c) Alternative methods considered to elevate *structures* and *manufactured homes*, if the location is in *nontidal waters* and the fill is proposed to achieve the elevation required in Section 70-28, Residential Structures or Section 70-29, Nonresidential Structures.

(6) For *accessory structures* 300 square feet or larger in area in floor area that are below the *base flood elevation*, a *Declaration of Land Restriction (Nonconversion Agreement)* shall be recorded on the property deed prior to issuance of the *Certificate of Occupancy*.

(7) For proposed work on existing *structures,* including any improvement, addition, repairs, alterations, rehabilitation, or reconstruction, sufficient information to determine if the work constitutes *substantial improvement* or repair of *substantial damage*, including but not limited to:

(a) If the existing *structure* was constructed after May 15, 1985, evidence that the work will not affect the structure's compliance with the *floodplain* management requirements in effect at the time the *structure* was permitted.

(b) For lateral additions, a description of the addition, whether it will be structurally connected to the *base building,* and the nature of all modifications to the *base building*, as necessary to apply the requirements of Section 70-30, Lateral Additions and 70-36, Lateral Additions.

(c) Market value documentation of the *structure* before the improvement or, if the work is repair of damage, before the damage occurred.

(d) Documentation of the actual cash value of all proposed work, including the actual cash value of all work necessary to repair and restore damage to the before-damaged condition, regardless of the amount of proposed work. The value of work performed by the owner or volunteers shall be valued at market labor rates; the value of donated or discounted materials shall be valued at market rates.

(e) In *floodways* and *coastal high-hazard areas*, permits shall be tracked by property location to determine if the cumulative value of improvements constitutes *substantial improvement* within any twelve-month period. The twelve-month period shall extend from the Certificate of Occupancy date for the first improvement until the building permit application date for successive improvements.

(8) Certifications and/or technical analyses prepared or conducted by a *licensed designer*, as appropriate, including:

(a) The determination of the *base flood elevations* or *hydrologic and hydraulic engineering analyses* prepared by a *licensed* engineer that are required by the Floodplain Administrator or are required by these regulations.

(b) The *Floodproofing Certificate* for floodproofed nonresidential *structures* in accord with Section 70-29.B, Floodproofing Requirements.

(c) Certification that engineered *flood openings* are designed to meet the minimum requirements.

(d) Certification that the proposed elevation, structural design, specifications and plans, and construction methods for *structures* in *coastal high hazard areas* (V Zones) and *Coastal A Zones*, are in accordance with accepted standards of practice and meet the requirements of this Chapter.

(9) For nonresidential *structures* proposed with *floodproofing*, an operations and maintenance plan as specified in Section 70-29, Nonresidential Structures.

(10) Other material and information requested by the Floodplain Administrator and necessary to determine conformance with these regulations.

B. New Technical Data

(1) The applicant may seek a *Letter of Map Change* by submitting new technical data to the *Federal Emergency Management Agency*, such as maps, topography, and engineering analyses to support revision of *floodplain* and *floodway* boundaries and/or *base flood elevations*. Such submissions shall be prepared in a format acceptable to the *Federal Emergency Management Agency* and any fees shall be the sole responsibility of the applicant. A copy of the submittal shall be attached to the application for a permit.

(2) If the applicant submits new technical data to support any change in *floodplain* and designated *floodway* boundaries and/or *base flood elevations* but has not sought a *Letter of Map Change* from the *Federal Emergency Management Agency*, the applicant shall submit such data to the *Federal Emergency Management Agency* as soon as practicable, but not later than six months after the date such information becomes available. Such submissions shall be prepared in a format acceptable to the *Federal Emergency Management Agency* and any fees shall be the sole responsibility of the applicant.

C. *Maryland Department of the Environment Floodplain* Regulation

Applicants for permits in *nontidal waters* must contact the *Maryland Department of the Environment*. Unless waived by *Maryland Department of the Environment*, per the Code of Maryland Regulations 26.17.04, Construction in Nontidal Waters and Floodplains, the *Maryland Department of the Environment* regulates the "100-year frequency floodplain of free-flowing waters." To determine the 100-year frequency *floodplain*, calculations must be based on the ultimate *development* of the watershed, assuming existing zoning. The resulting flood hazard areas subject to state regulation may be different than the *special flood hazard areas* established in Section 70-12, *Flood Insurance Rate Map* Use and Interpretation.

70-46. Permit Application Review

The Floodplain Administrator shall:

A. Notify applicants that permits from other state and federal authorities may be required.

B. Review all permit applications to assure that all necessary permits have been received from the federal, state or local governmental agencies from which prior approval is required. The applicant shall be responsible for obtaining such permits, including permits issued by:

(1) The U.S. Army Corps of Engineers under Section 10 of the Rivers and Harbors Act and Section 404 of the Clean Water Act;

(2) *Maryland Department of the Environment* pursuant to COMAR 26.23 (Nontidal Wetlands) and Section 401 of the Clean Water Act;

(3) *Maryland Department of the Environment* for construction on *nontidal waters* pursuant to COMAR 26.17.04; and

(4) *Maryland Department of the Environment* pursuant to COMAR 26.24 (Tidal Wetlands).

C. Review applications for compliance with these regulations after information required in these regulations or identified in the Floodplain Administrator's checklist and required by the Floodplain Administrator has been received.

D. Approve permits if the proposed *development* conforms to this Chapter's requirements and all other applicable local codes and chapters. If applicable, the Floodplain Administrator shall note on the permit the proper elevation to which the *structures* or additions *lowest floor* must be elevated.

70-47. Permit Revisions and Expiration; Monitoring of Construction

A. A permit is valid provided the actual *start of construction* is within 180 days of permit issuance.

B. Requests for extensions shall be in writing and shall include a justifiable cause for delay. The Floodplain Administrator may grant, in writing, one or more extensions of time, for periods not more than 90 days each, provided there has been no revision to the basis for establishing *base flood elevations* and *special flood hazard areas* set forth in Section 70-12, *Flood Insurance Rate Map* Use and Interpretation.

C. Work shall be completed within 540 calendar days of the permit issuance date unless the permit specifies a longer period or a written extension is granted.

D. If a permit expires, no *development* shall proceed until a new permit application is submitted and approved.

E. After permit issuance, no changes shall be made to any of the plans, specifications or other documents without advance written approval of the Floodplain Administrator. A copy of the permit or other verification must be displayed at the construction site during construction activity.

F. The Floodplain Administrator shall make periodic inspections of *development* permitted in *special flood hazard areas*, at appropriate times throughout the period of construction in order to monitor compliance. Such inspections may include:

(1) Stake-out inspection, to determine location on the site relative to the flood hazard area and designated *floodway*.

(2) Foundation inspection, after placement of the *lowest floor* and prior to further vertical construction, to collect information or certification of the actual elevation of the *lowest floor*.

(3) Inspection of *enclosures below the lowest floor*, including crawl/under floor spaces.

(4) Utility inspection, after installation of specified equipment and appliances, to determine their location with respect to the *base flood elevation*.

(5) Final inspection prior to issuance of the *Certificate of Occupancy*.

70-48. Submissions Required Prior to Final Inspection

A. Pursuant to the *Elevation Certificate Submission Agreement* submitted with an application for a *structure* that must be elevated, the applicant shall have an *Elevation Certificate* prepared and submitted upon placement of the *lowest floor* and prior to further vertical construction; and also prior to final inspection and issuance of a *Certificate of Occupancy*. The *Elevation Certificate* shall be prepared by a *licensed* engineer or *licensed* surveyor. When used to document *building* height above grade in *special flood hazard areas* for which *base flood elevation* data are not available, the *Elevation Certificate* shall be completed in accordance with *Federal Emergency Management Agency* instructions.

B. Where applicable, the *Declaration of Land Restriction (Nonconversion Agreement)* shall be recorded on the property deed prior to issuance of the *Certificate of Occupancy*.

70-49. Enforcement

A. Notice of *Violation* and Stop Work Order
If the Floodplain Administrator determines that there has been a *violation* of these regulations, the information shall be forwarded to the Chief Code Compliance Officer for disposition in accordance with Chapter 58 of the Talbot County Code. The Chief Code Compliance Officer shall give written notice of such *violation* to the owner, the owner's authorized agent, and the *person* responsible for such violation, and may issue a written stop work order. The notice of

violation shall be an Administrative Abatement Order as established in Chapter 58. The Administrative Abatement Order shall as a minimum:

(1) List the *violations*, referring to the section or sections of these regulations that have been violated;

(2) Order remedial compliance action;

(3) Specify a reasonable period of time to correct the *violation*;

(4) Advise the recipients of the right to appeal; and

(5) Be served in person; or

(6) Be posted in a conspicuous place in or on the property and sent by registered or certified mail to the last known mailing address, residence, or place of business of the recipients.

B. *Violations* and Penalties

Violations of these regulations or failure to comply with the requirements of these regulations or any conditions attached to a permit or *variance* shall constitute a misdemeanor and a civil infraction.

(1) A fine may be imposed by the Chief Code Compliance Officer for the violation. Each day a *violation* continues shall be considered a separate offense.

(2) The fine does not excuse the *violation*. The *violation* must be corrected prior to any further work progressing on the project.

(3) Nothing herein shall prevent Talbot County from taking such other lawful action as is necessary to prevent or remedy *violations*.

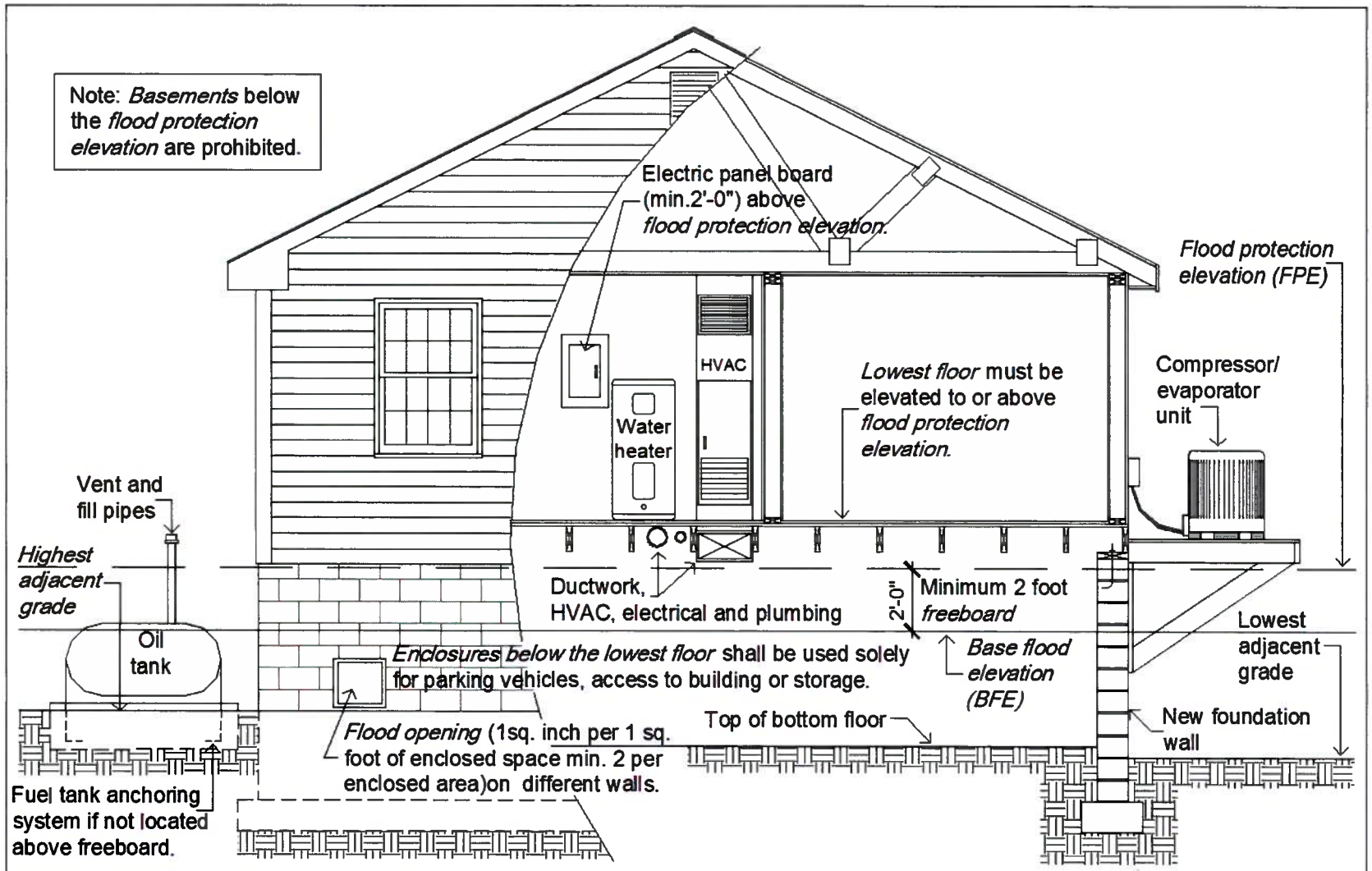
C. *Maryland Department of the Environment* Notification

The *Maryland Department of the Environment* shall be notified by the Chief Code Compliance Officer within 30 days after issuance of a notice or citation for any *violation* which requires a fine or court appearance. New or renewal federal *flood* insurance may be denied to any *structure* remaining in violation of this chapter. The *violation* may also violate state law, may be subject to separate action, and may incur a separate penalty.

ARTICLE VIII DEFINITIONS

Unless specifically defined below, words or phrases used in these regulations shall be interpreted to have the meaning they have in common usage and to give these regulations the most reasonable application. If a word or phrase defined below is also defined in another Chapter of the

Talbot County Code, the definition in this section is intended to apply only to this Chapter 70, Floodplain Management Ordinance.



Typical home construction in special flood hazard areas (A zones)

Accessory Structure: A structure detached from a principal building on the same lot and incidental and subordinate to the principal building or use.

Area of Shallow Flooding: A designated Zone AO on the *Flood Insurance Rate Map* with a one-percent annual chance or greater of *flooding* to an average *flood* depth of one to three 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.

Base Building: The *building* to which an addition is being added. This term is used in provisions relating to additions.

Base Flood: The *flood* having a one-percent probability of being equaled or exceeded in any given year; the base *flood* also is referred to as the one-percent annual chance (100-year) *flood*.

Base Flood Elevation: The water surface elevation of the *base flood* in relation to the datum specified on the *community*'s *Flood Insurance Rate Map*. In *areas of shallow flooding*, the base flood elevation is the highest adjacent natural grade elevation plus the flood depth number specified in feet on the *Flood Insurance Rate Map*, or at least four (4) feet if the depth number is not specified.

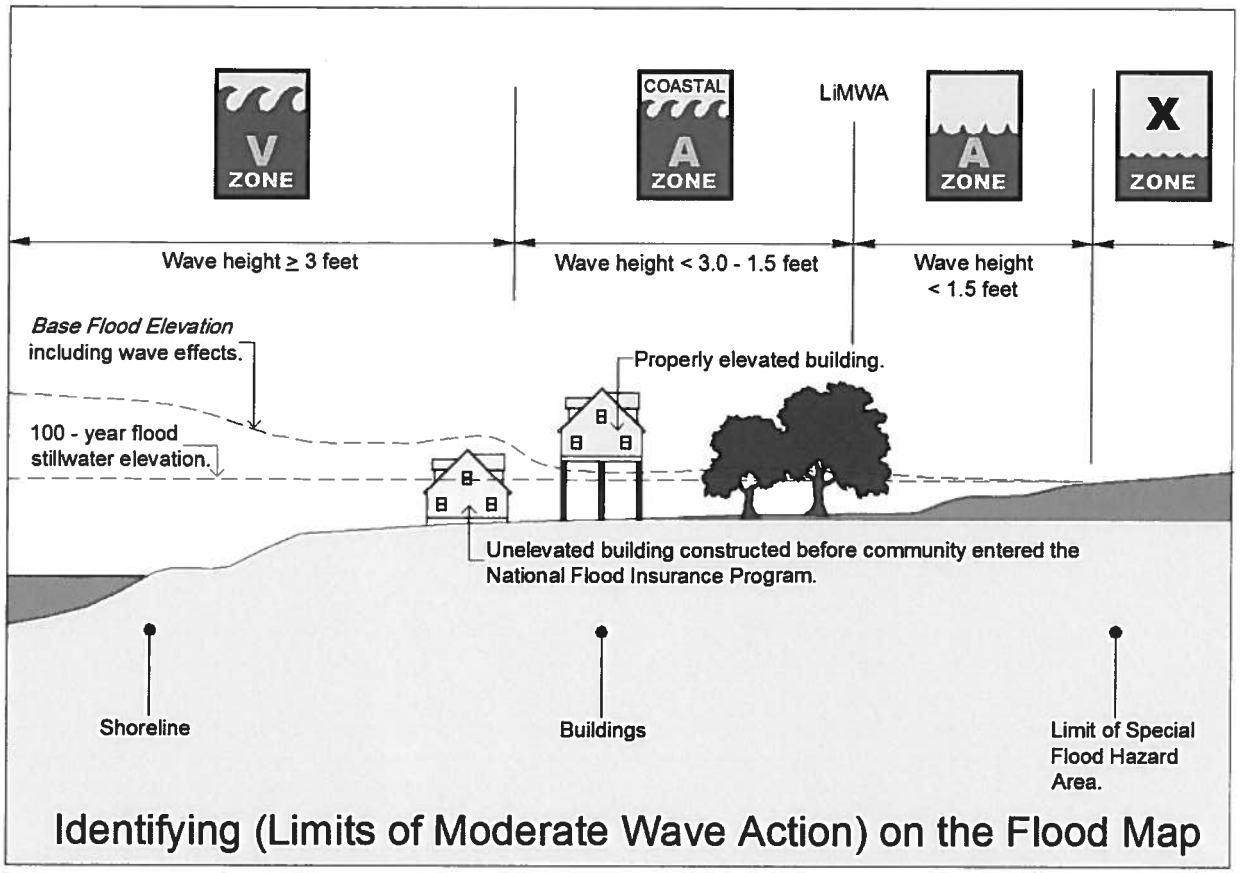
Basement: Any area of a *building* with its floor subgrade (below ground level) on all sides.

Building: A structure which is designed, built or occupied as a shelter for persons, animals, or property.

Building Code(s): The Maryland Building Performance Standards (COMAR 05.02.07), including the International Building Code, International Residential Code, International Energy Conservation Code and International Existing Building Code; also the effective Talbot County plumbing, electrical, mechanical and fuel gas codes; and other applicable Talbot County building codes.

Certificate of Occupancy: A permit to legally occupy or use a *building* for the intended purpose.

Coastal A Zone: An area within a *special flood hazard area*, landward of a *coastal high hazard area* (V Zone) or landward of a shoreline without a mapped *coastal high hazard area*, in which the principal sources of *flooding* are astronomical tides and storm surges, and in which, during *base flood* conditions, the potential exists for breaking waves with heights greater than or equal to 1.5 feet. The inland limit of the Coastal A Zone may be delineated on *Flood Insurance Rate Maps* as the "Limit of Moderate Wave Action."



Coastal High Hazard Area: 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. *Coastal high hazard areas* also are referred to as "V Zones" and are designated on *Flood Insurance Rate Maps* as zones VE or V1-30.

Community: A political subdivision of the State of Maryland (county, city or town) that has authority to adopt and enforce floodplain management regulations within its jurisdictional boundaries.

Critical and Essential Facilities: *Structures* that are intended to remain operational in the event of extreme environmental flooding, wind, snow or earthquakes. [Note: See Maryland Building Performance Standards, Sec. 1602 and Table 1604.5.] They typically include hospitals, fire stations, police stations, critical record storage, facilities that handle or store *hazardous* materials, and similar facilities.

Declaration of Land Restriction (Nonconversion Agreement): A form signed by the owner agreeing not to convert or modify in any manner that is inconsistent with the permit's terms and these regulations, for *enclosures below the lowest floor* of elevated *buildings* and certain *accessory structures*. This agreement must be recorded on the property deed.

Development: Any manmade change to improved or unimproved real estate, including but not limited to construction or placement of a *structure*, substantial improvement of structures, mining, dredging, filling, grading, paving, clearing, dumping, excavation, drilling or storage of equipment or materials. Development includes subdivision of land.

Elevation Certificate: FEMA Form 81-31, on which surveyed elevations and other data pertinent to a property and a building are identified to certify as-built elevation of structures above mean sea level.

Elevation Certificate Submission Agreement: A form on which the applicant for a permit to construct a *building* or *structure*, to construct certain lateral additions, to place or replace a *manufactured home*, to substantially improve a *building*, *structure*, or *manufactured home*, agrees to have an *Elevation Certificate* prepared by a *licensed* engineer or *licensed* surveyor and to submit the certificate as required by this Chapter.

Enclosure Below the Lowest Floor: An unfinished or *flood*-resistant enclosure that is located below an elevated *building*, is surrounded by walls on all sides, and is usable solely for parking of vehicles, *building* access or storage, in an area other than a *basement* area. Also see "Lowest Floor."

Federal Emergency Management Agency (FEMA): The federal agency with the overall responsibility for administering the *National Flood Insurance Program.*

Flood or Flooding: 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 Damage-Resistant Materials: Construction material capable of withstanding direct and prolonged contact with floodwaters without sustaining more than cosmetic damage.

Flood Insurance Rate Map (FIRM): An official map on which the *Federal Emergency Management Agency* has delineated *special flood hazard areas* to indicate the magnitude and nature of *flo*od hazards, to designate applicable *flood zones*, and to delineate *floodways*, if applicable. FIRMs that have been prepared in digital format or converted to digital format are referred to as digital FIRMs (DFIRM).

Flood Insurance Study (FIS): The official report from the *Federal Emergency Management Agency* providing *flood* profiles, *floodway* information, and the water surface elevations.

Flood Opening: A flood opening (non-engineered) is an opening that is used to meet the prescriptive requirement of one square inch of net open area for every square foot of enclosed area. An engineered flood opening is an opening that is designed and certified by a *licensed*

designer as meeting certain performance characteristics, including providing automatic entry and exit of floodwaters. The certification may be by a *licensed* engineer or by an Evaluation Report from the International Code Council Evaluation Service, Inc., a subsidiary of the International Code Council, Inc.

Flood Protection Elevation: The *base flood elevation* plus two (2) feet of *freeboard.*

Flood Zone: A designation for areas that are shown on *Flood Insurance Rate Maps*:

A. **Zone A:** *Special flood hazard areas* subject to inundation by the *base flood* or one-percent annual probability (100-year) *flood*; *base flood elevations* are not determined.

B. **Zone AE and Zone A1-30:** *Special flood hazard areas* subject to inundation by the one-percent annual probability (100-year) *flood*; *base flood elevations* are determined; *floodways* may or may not be determined. In areas subject to tidal *flooding*, the Limit of Moderate Wave Action, also known as the *Coastal A Zone*, is delineated.

C. **Zone AH and Zone AO:** *Areas of shallow flooding*, with *flood* depths of one to three feet (usually areas of ponding or sheet flow on sloping terrain), with or without *base flood elevations* or designated *flood* depths.

D. **Zone B and Zone X (shaded):** Areas subject to inundation by the 0.2-percent annual chance (500-year) *flood*; areas subject to the one-percent annual probability (100-year) *flood* with average depths of less than one foot or with contributing drainage area less than one square mile; and areas protected from the *base flood* by levees.

E. **Zone C and Zone X (unshaded):** Areas outside of Zones designated A, AE, A1-30, AO, VE, V1-30, B, and X (shaded).

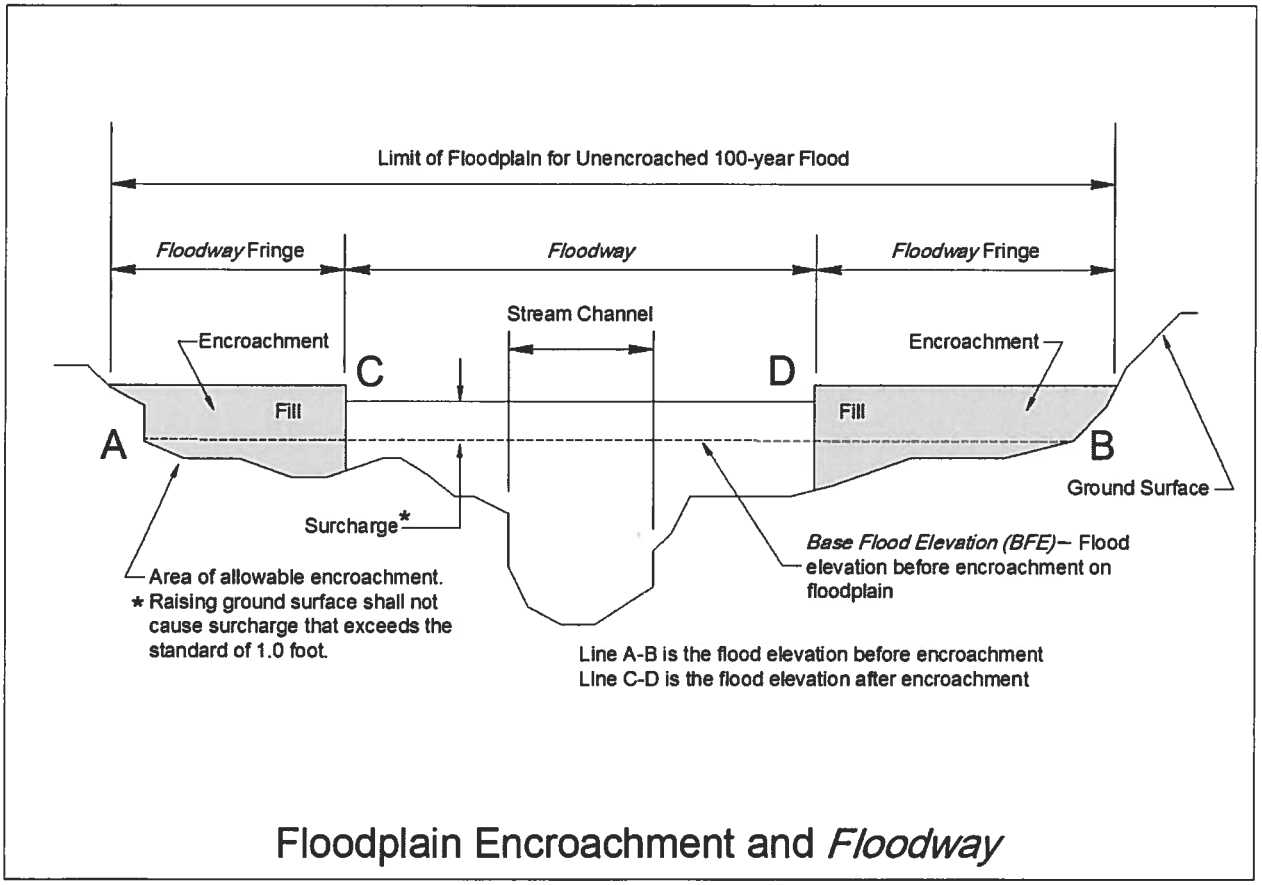
F. **Zone VE and Zone V1-30:** *Special flood hazard areas* subject to inundation by the one-percent annual probability (formerly the 100-year) *flood* and subject to high velocity wave action (also see *coastal high hazard area*).

Floodplain: Any land area susceptible to being inundated by water from any source (see definition of "Flood" or "Flooding").

Floodproofing or Floodproofed: 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, such that the *structures* are watertight with walls substantially impermeable to water passage and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.

Floodproofing Certificate: FEMA Form 81-65 that is to be completed, signed and sealed by a *licensed designer* to certify that the design of *floodproofing* and proposed methods of construction are in accordance with the applicable requirements of Section 70-29, Nonresidential Structures.

Floodway: A watercourse channel and the adjacent land areas that must be reserved in order to pass the *base flood* discharge without cumulatively increasing the water surface elevation more than one foot. When shown on a *Flood Insurance Rate Map*, the floodway is referred to as the "designated floodway."



Floodplain Encroachment and *Floodway*

Freeboard: An additional elevation that provides a safety factor for uncertainties that could contribute to *flood* heights greater than the *base flood* height.

Free-of-Obstruction: A condition of open foundations (pilings, columns, or piers) that are without attached elements or foundation components that would obstruct the free passage of floodwaters and waves beneath *structures* and through the foundations.

Functionally Dependent Use: A use which cannot perform its intended purpose unless it is located or carried out in close proximity to water; the term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, ship-building and ship-repair facilities, but does not include long-term storage or related manufacturing facilities.

Hazardous Material: Any substance, including oil or its by-products, that:

A. Conveys toxic, lethal, or other injurious effects or which causes sub-lethal harmful alterations to plant, animal, or aquatic life;

B. May be injurious to human beings;

C. Persists in the environment; and

D. Any matter identified as a "hazardous waste" by the Environmental Protection Agency or a "controlled hazardous substance" by the *Maryland Department of the Environment.*

Highest Adjacent Grade: The highest natural elevation of the ground surface, prior to construction, next to the proposed foundation of a *structure.*

Historic Structure: Any *structure* that is:

A. Individually listed in the National Register of Historic Places (a listing maintained by the U.S. Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listings on the National Register of Historic Places;

B. Certified or preliminarily determined by the Secretary of the Interior as contributing to the registered historic district's historical significance or a district preliminarily determined by the Secretary to qualify as a registered historic district;

C. Individually listed on the Maryland Inventory of Historic Properties maintained by the Maryland Historical Trust; or

D. Individually listed on the inventory of historic places maintained by Talbot County if the County's historic preservation program is certified by the Maryland Historical Trust or the Secretary of the Interior.

Hydrologic and Hydraulic Engineering Analyses: Analyses performed by a *licensed* engineer, in accordance with standard engineering practices accepted by the *Maryland Department of the Environment* and the *Federal Emergency Management Agency*, used to determine the *base flood*, other frequency floods, *flood* elevations, *floodway* information and boundaries, and *flood* profiles.

Letter of Map Change (LOMC): An official *Federal Emergency Management Agency* determination, by letter, amending or revising an effective *Flood Insurance Rate Map* or *Flood Insurance Study*. Letters of Map Change include:

A. Letter of Map Amendment (LOMA): An amendment based on technical data showing that a property was incorrectly included in a designated *special flood hazard area.* A LOMA amends the current effective *Flood Insurance Rate Map* and establishes that a specific property or *structure* is not located in a *special flood hazard area.*

B. Letter of Map Revision (LOMR): A revision based on technical data that may show changes to *flood zones*, *flood* elevations, *floodplain* and *floodway* delineations, and planimetric features. A Letter of Map Revision Based on Fill (LOMR-F) is a determination that a *structure* or parcel of land has been elevated by fill above the *base flood elevation* and is,

therefore, no longer exposed to *flooding* associated with the *base flood*. In order to qualify for this determination, the fill must have been permitted and placed in accordance with the *community*'s *floodplain* management regulations.

C. Conditional Letter of Map Revision (CLOMR): A formal review and comment as to whether a proposed *flood* protection project or other project complies with the minimum National Flood Insurance Program requirements for such projects with respect to delineation of *special flood hazard areas*. A CLOMR does not revise the effective *Flood Insurance Rate Map* or *Flood Insurance Study*; upon submission and approval of certified as-built documentation, a Letter of Map Revision may be issued by the *Federal Emergency Management Agency*, to revise the effective *Flood Insurance Rate Maps*.

Licensed: Professionals authorized to practice in the State of Maryland by issuance of licenses by the Maryland Board of Architects, Maryland Board of Professional Engineers, Maryland Board of Professional Land Surveyors, and the Maryland Real Estate Appraisers and Home Inspectors Commission.

Licensed Designer: A *licensed* professional engineer or a *licensed* architect.

Lowest Floor: The lowest floor of the lowest enclosed area (including *basement*) of a *structure*; the floor of an *enclosure below the lowest floor* is not the lowest floor provided the enclosure is constructed in accordance with these regulations. The lowest floor of a *manufactured home* is the bottom of the lowest horizontal supporting member (longitudinal chassis frame beam).

Manufactured Home: 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 connected to the required utilities. The term manufactured home does not include a *recreational vehicle*.

Market Value: The price at which a property will change hands between a willing buyer and a willing seller, neither party being under compulsion to buy or sell and both having reasonable knowledge of relevant facts. For these regulations, a *building*'s market value is determined by a *licensed* real estate appraiser or the *building*'s (improvement's) most recent, full phased-in assessment value determined by the Maryland Department of Assessments and Taxation.

Maryland Department of the Environment (MDE): A principal department of the State of Maryland that is charged with, among other responsibilities, the coordination of the National Flood Insurance Program in Maryland (NFIP State Coordinator) and the administration of regulatory programs for *development* and construction that occur within the *waters of the state*, including nontidal wetlands, *nontidal waters* and *floodplains*, and state and private tidal wetlands (Tidal Wetlands). Unless otherwise specified, "MDE" refers to the Department's Wetlands and Waterways Program.

National Flood Insurance Program (NFIP): The program authorized by the U.S. Congress in 42 U.S.C. §§4001 - 4129. The NFIP makes *flood* insurance coverage available in communities that agree to adopt and enforce minimum regulatory requirements for *development* in areas prone to *flooding* (see definition of "Special Flood Hazard Area").

New Construction: *Structures*, including additions and improvements, and the placement of *manufactured homes*, for which the *start of construction* commenced on or after May 15, 1985, the initial effective date of the Talbot County Floodplain Management Ordinance, including any subsequent improvements, alterations, modifications, and additions to such *structures*.

NFIP State Coordinator: See Maryland Department of the Environment.

Nontidal Waters: See "Waters of the State." As used in these regulations, "nontidal waters" refers to any stream or body of water within the state that is subject to state regulation, including the "100-year frequency *floodplain* of free-flowing waters." COMAR 26.17.04 states that "the landward boundaries of any tidal waters shall be deemed coterminous with the wetlands boundary maps adopted pursuant to Environment Article, §16-301, Annotated Code of Maryland." Therefore, the boundary between the State's tidal and nontidal waters is the tidal wetlands boundary.

Person: An individual or group of individuals, corporation, partnership, association, or any other entity, including state and local governments and agencies.

Recreational Vehicle: A vehicle that is built on a single chassis, 400 square feet or less when measured at the largest horizontal projection, designed to be self-propelled or permanently towable by a light duty truck, and designed primarily not for use as a permanent dwelling, but as temporary living quarters for recreational, camping, travel, or seasonal use.

Site Plan: A plan showing the proposed *development* of a lot or parcel. A site plan shows existing and proposed natural features, *structures*, *building* footprints and elevations, road rights-of-way, paved areas, access, walkways, vegetative cover, landscaping, screening, and stormwater management. There are two types of site plans, major and minor, with different submittal requirements and review processes as established in the Zoning, Subdivision and Land Development Ordinance, Chapter 190 of the Talbot County Code.

Special Flood Hazard Area (SFHA): The land in the *floodplain* subject to a one-percent or greater probability of *flooding* in a year. Special flood hazard areas are designated by the *Federal Emergency Management Agency* in *Flood Insurance Studies* and on *Flood Insurance Rate Maps* as Zones A, AE, AH, AO, A1-30, and A99, and Zones VE and V1-30. The term includes areas shown on other flood maps that are identified in Section 70-12, Flood Insurance Rate Map Use and Interpretation.

Start of Construction: The date the *building* permit was issued, provided the actual start of construction, repair, or other improvement was within 180 days of the permit date. The actual start means either the first permanent construction, such as placement of slab, footings, piles, or

columns; or the placement of a *manufactured home* on a foundation. Permanent construction does not include land clearing, grading and filling; installation of streets or walkways; excavation; the erection of temporary forms; or installation of *accessory structures*, such as garages or sheds not occupied as dwelling units or not part of the main *structure*. 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 that alteration affects the external dimensions of the *building*.

Structure: That which is built or constructed; specifically, a walled and roofed *building*. This term includes gas or liquid storage tanks that are principally above ground, as well as *manufactured homes*.

Substantial Damage: 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 *structure's market value* before the damage occurred. Also used as "substantially damaged" *structures*.

Substantial Improvement: Any reconstruction, rehabilitation, addition, or other improvement of a *structure*, the cost of which equals or exceeds 50 percent of the *structure's market value* before the improvement's *start of construction*. The term includes any repair or reconstruction of *structures* which have incurred *substantial damage*, regardless of the actual cost of the 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 official prior to submission of an application for a permit 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*.

Temporary Structure: A *structure* installed, used, or erected for a period of less than 180 days.

Variance: A grant of relief from the strict application of one or more requirements of these regulations.

Violation: Any construction or *development* in a *special flood hazard area* that is being performed without an issued permit. The failure of *development* for which a permit is issued to comply with these regulations and the conditions of the issued permit. *Development* without the required design certifications, the *Elevation Certificate*, or other evidence of compliance required is presumed to be a *violation* until such time as the required documentation is provided.

Watercourse: The channel, including channel banks and bed, of *nontidal waters*.

Watercourse Alteration: Includes, but is not limited to widening, deepening or relocating the channel, including excavation or filling of the channel. Watercourse alteration does not include

construction of a road, bridge, culvert, dam, or in-stream pond unless the channel is proposed to be realigned or relocated as part of such construction.

Waters of the State: [See Environment Article, Title 5, Subtitle 1, Annotated Code of Maryland.] Waters of the State include:

A. Both surface and underground waters within the boundaries of the state subject to its jurisdiction;

B. That portion of the Atlantic Ocean within the boundaries of the state;

C. The Chesapeake Bay and its tributaries;

D. All ponds, lakes, rivers, streams, public ditches, tax ditches, and public drainage systems within the state, other than those designed and used to collect, convey, or dispose of sanitary sewage; and

E. The *floodplain* of free-flowing waters determined by Maryland Department of the Environment on the basis of the 100-year *flood* frequency.

SECTION TWO: BE IT FURTHER ENACTED, that if any provision of this Ordinance or the application thereof to any person or circumstance is held invalid for any reason in a court of competent jurisdiction, the invalidity does not affect other provisions or any other application of this Ordinance which can be given effect without the invalid provision or application, and for this purpose the provisions of this Ordinance are declared severable.

SECTION THREE: AND BE IT FURTHER ENACTED, that the title and a summary of this Bill shall be published once on the first publication date after enactment of the Bill in accordance with County Charter § 213 (c). The title is not a substantive part of this Bill. If the Bill is amended, the title may be administratively revised if required to conform the title to the content of the Bill as finally enacted.

SECTION FOUR: AND BE IT FURTHER ENACTED, that the Publishers of the Talbot County Code or the Talbot County Office of Law, in consultation with and subject to the approval of the County Manager, shall make non-substantive corrections to codification, style, capitalization, punctuation, grammar, spelling, and any internal or external reference or citation to the Code that is incorrect or obsolete, with no further action required by the County Council. All such corrections shall be adequately referenced and described in an editor's note following the section affected.

SECTION FIVE: AND BE IT FURTHER ENACTED, that this ordinance shall take effect on August 5, 2013.

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PUBLIC HEARING

Having been posted and Notice of time, date, and place of hearing, and Title of Bill No. 1233 having been published, a public hearing was held on Tuesday, March 26, 2013 at 6:30 p.m. in the Bradley Meeting Room, South Wing, Talbot County Courthouse, 11 North Washington Street, Easton, Maryland.

BY THE COUNCIL

Read the third time.

ENACTED: **March 26, 2013**

By Order Susan W. Moran
Susan W. Moran, Secretary

Bartlett - Aye

Hollis - Aye

Pack - Aye

Price - Aye

Duncan - Aye (via absentee ballot)