

Chapter 20

FLOOD DAMAGE PREVENTION

[HISTORY: Adopted by the Board of Trustees of the Village of Brockport 8-1-88 as Local Law No. 2, 1988.¹ Amendments 00-00-08 where applicable.]

GENERAL REFERENCES

Building Construction Code — See Ch. 10.
Building construction administration — See Ch. 11.
Environmental quality review — See Ch. 17A.
Land subdivision regulations — See Ch. 26.
Local law hearings – See Ch. 28.
Minimum Housing and Buildings – See Ch. 36.
Sewers – See Ch. 47
Strom Water Management – See Ch 27.
Trailers and trailer camps — See Ch. 51.
Zoning — See Ch. 58.
Code Enforcement — See Ch. 59.
Uniform Code State of New York

ARTICLE I

§ 20-1. **Introduction;**

The Board of Trustees of the Village of Brockport finds that the potential and/or actual damages from flooding and erosion may be a problem to the residents of the Village of Brockport and that such damages may include: destruction or loss of private and public housing, damage to public facilities, both publicly and privately owned, and injury to and loss of human life. In order to minimize the threat of such damages and to achieve the purposes and objectives hereinafter set forth, this local law is adopted.

§ 20-2. **Purpose;**

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

- A. Regulate uses which are dangerous to health, safety and property due to water or erosion hazards or which result in damaging increases in erosion or in flood heights or velocities.
- B. Require that uses vulnerable to floods, including facilities, which serve such uses, are protected against flood damage at the time of initial construction.

- C. Control the alteration of natural floodplains, stream channels and natural protective barriers which are involved in the accommodation of floodwaters.
- D. Control filling, grading, dredging and other development, which may increase erosion or flood damages.
- E. Regulate the construction of flood barriers which will unnaturally divert floodwaters or which may increase flood hazards to other lands.
- F. Qualify for and maintain participation in the National Flood Insurance Program.

§ 20-3. **The Objectives of this local law are;**

- A. To protect human life and health.
- B. To minimize expenditure of public money for costly flood control projects.
- C. To minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public.
- D. To minimize prolonged business interruptions.
- E. To minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets and bridges located in areas of special flood hazard.
- F. To help maintain a stable tax base by providing for the sound use and development of areas of special flood hazard so as to minimize future flood blight areas.
- G. To provide that developers are notified that property is in an area of special flood hazard.
- H. To ensure that those who occupy the areas of special flood hazard assume responsibility for their actions.

§ 20-4. **Definitions and word usage;**

- A. Unless the context specifically indicates otherwise, the meaning of terms used in this ordinance shall be as follows:
- B. As used in this chapter, the following terms shall have the meanings indicated:

APPEAL — Means a request for a review of the local administrator’s interpretation of any provision of this local law or a request for a variance.

AREA OF SHALLOW FLOODING — Means a designated AO, AH or VO Zone on a community’s Flood Insurance Rate Map (FIRM), with base flood depths from one to three feet, where a clearly defined channel does not exist, where the path of flooding is unpredictable and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

AREA OF SPECIAL FLOOD HAZARD — Is the land in the floodplain within a community subject to a one percent or greater chance of flooding in any given year. This area may be designated as Zone A, AE, AH, AO, A1-A30, A99, V, VO, VE or V1-V30. It is also commonly referred to as the “base floodplain” or “100 year floodplain.” For purposes of this Local Law, the term “special flood hazard area (SFHA)” is synonymous in meaning with the phrase “area of special flood hazard.”

BASE FLOOD — Means the flood having a one percent chance of being equaled or exceeded in any given year.

BASEMENT — Means that portion of a building having its floor sub-grade (below ground level) on all sides.

BREAKAWAY WALL — Means a wall that is not part of the structural support of the building and is intended, through its design and construction, to collapse under specific lateral loading forces without causing damage to the elevated portion of the building or the supporting foundation system.

BUILDING — See “Structure”

CELLAR — Has the same meaning as “basement.”

CODE ENFORCEMENT OFFICER — Means an Officer employed by the Village of Brockport as certified by the State of New York either in the capacity of the Code Enforcement Officer, Building Inspector, Fire Marshal, Planning/Zoning Officer, Peace Officer, Stormwater Manager, Floodplain Administrator or any combination there-of.

CODE ENFORCEMENT PERSONNEL — Shall be deemed to include the Code Enforcement Officer and all Inspectors employed by the Village of Brockport, as certified by the State of New York either in the capacity of Code Enforcement Officer, Building Inspector & Fire Marshal, and/or titled as the Assistant Code Enforcement Officer, Building Inspector & Fire Marshal or any combination there-of.

CRAWL SPACE — Means an enclosed area beneath the lowest elevated floor, eighteen inches or more in height, which is used to service the underside of the lowest elevated floor. The elevation of the floor of this enclosed area, which may be of soil, gravel, concrete or other material, must be equal to or above the lowest adjacent exterior grade. The enclosed crawl space area shall be properly vented to allow for the equalization of hydrostatic forces, which would be experienced during periods of flooding.

CRITICAL FACILITIES — Means;

1. Structures or facilities that produce, use, or store highly volatile, flammable, explosive, toxic and/or water-reactive materials;
2. Hospitals, nursing homes and housing likely to contain occupants who may not be sufficiently mobile to avoid death or injury during a flood;
3. Police stations, fire stations, public works vehicle and equipment storage facilities, and emergency operations centers that are needed for flood response activities before, during and after a flood and;
4. Public and private utility facilities that are vital to maintaining or restoring normal services to flooded areas before, during, and after a flood.

CUMULATIVE SUBSTANTIAL IMPROVEMENT — Means any reconstruction, rehabilitation, addition, or other improvement of a structure that equals or exceeds 50 percent of the market value of the structure at the time of the improvement or repair when counted cumulatively for 10 years.

DEVELOPMENT — Means any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, paving, excavation or drilling operations or storage of equipment or material located within the area of special flood hazard.

ELEVATED BUILDING — Means a non-basement building (i) built, in the case of a building in Zones A1-A30, AE, A, A99, AO, AH, B, C, X, or D, to have the top of the elevated floor, or in the case of a building in Zones V1-30, VE, or V, to have the bottom of the lowest horizontal structure member of the elevated floor, elevated above the ground level by means of pilings, columns (posts and piers), or shear walls parallel to the flow of the water and (ii) adequately anchored so as not to impair the structural integrity of the building during a flood of up to the magnitude of the base flood. In the case of Zones A1-A30, AE, A, A99, AO, AH, B, C, X, or D, "elevated building" also includes a building elevated by means of fill or solid foundation perimeter walls with openings sufficient to facilitate the unimpeded movement of flood waters. In the case of Zones V1-V30, VE, or V, "elevated building" also includes a building otherwise meeting the definition of "elevated building", even though the lower area is enclosed by means of breakaway walls that meet the federal standards.

FEDERAL EMERGENCY MANAGEMENT AGENCY — Means the Federal agency that administers the National Flood Insurance Program.

FLOOD or FLOODING — Means a general and temporary condition of partial or complete inundation of normally dry land areas from:

- (1) The overflow of inland or tidal waters.
- (2) The unusual and rapid accumulation or runoff of surface waters from any source.

"Flood" or "flooding" also means the collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as a flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding as defined in (1) above.

FLOOD BOUNDARY AND FLOODWAY MAP (FBFM) — Means an official map of the community published by the Federal Emergency Management Agency as part of a riverine community's Flood Insurance Study. The "FBFM" delineates a regulatory floodway along watercourses studied in detail in the Flood Insurance Study.

FLOOD ELEVATION STUDY — Means an examination, evaluation and determination of the flood hazards and, if appropriate, corresponding water surface elevations, or an examination, evaluation and determination of flood-related erosion hazards.

FLOOD HAZARD BOUNDARY MAP (FHBM) — Means an official map of a community, issued by the Federal Emergency Management Agency, where the boundaries of the areas of special flood hazard have been designated as Zone A but no water surface elevation data is provided.

FLOOD INSURANCE RATE MAP (FIRM) — Means an official map of a community on which the Federal Emergency Management Agency has delineated both the areas of special flood hazard and the risk premium zones applicable to the community.

FLOOD INSURANCE STUDY — See “flood elevation study”

FLOODPLAIN or FLOOD-PRONE AREA — Means any land area susceptible to being inundated by water from any source (see definition of "Flooding").

FLOODPROOFING — Means any combination of structural and non-structural additions, changes or adjustments to structures, which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

FLOODWAY — Has the same meaning as “Regulatory Floodway.”

FLOOR — Means the top surface of an enclosed area in a building, including basement, i.e., top of slab in concrete slab construction or top of wood flooring in wood frame construction.

FUNCTIONALLY DEPENDENT USE — Means a use which cannot perform its intended purpose unless it is located or carried out in close proximity to water, such as a docking or port facility necessary for the loading and unloading of cargo or passengers, shipbuilding and ship repair. The term does not include long-term storage, manufacture, sales or service facilities.

HIGHEST ADJACENT GRADE — Means the highest natural elevation of the ground surface, prior to construction, next to the proposed walls of a structure.

HISTORIC STRUCTURE — Means any structure that is:

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

LOCAL ADMINISTRATOR — Is an officer employed by the Village of Brockport to administer and implement this local law by granting or denying development permits in accordance with its provisions. This person is often the Building Inspector, Code Enforcement Officer, and/or the municipal engineer.

LOWEST FLOOR — Means lowest floor of the lowest enclosed area (including basement or cellar). An unfinished or flood-resistant enclosure, usable solely for the parking of vehicles, building access or storage in an area other than a basement or cellar, is not considered a building's "lowest floor," provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this local law.

MANUFACTURED HOME — Means a structure, transportable in one or more sections, which is built on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities. The term does not include a "Recreational vehicle."

MANUFACTURED HOME PARK OR SUBDIVISION — Means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

MEAN SEA LEVEL — Means, for purposes of the National Flood Insurance Program, the National Geodetic Vertical Datum (NGVD) of 1929, the North American Vertical Datum of 1988 (NAVD 88), or other datum, to which base flood elevations shown on a community's Flood Insurance Rate Map are referenced.

MOBILE HOME — Has the same meaning as "Manufactured home."

NEW CONSTRUCTION — Means structures for which the "start of construction" commenced on or after the effective date of a floodplain management regulation adopted by the Village of Brockport and includes any subsequent improvements to such structure.

ONE-HUNDRED-YEAR FLOOD or 100-year FLOOD — Has the same meaning as "Base Flood."

PRINCIPALLY ABOVE GROUND — Means that at least 51 percent of the actual cash value of the structure, excluding land value, is above ground.

RECREATIONAL VEHICLE — Means a vehicle which is:

- (1) Built on a single chassis;
- (2) 400 square feet or less when measured at the largest horizontal projections;
- (3) Designed to be self-propelled or permanently towable by a light duty vehicle; and
- (4) Not designed primarily for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

REGULATORY FLOODWAY — Means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height as determined by the Federal Emergency Management Agency in a Flood Insurance Study or by other agencies as provided in § 20-6 and/or § 20-13 of this local law.

START OF CONSTRUCTION — Means the date of permit issuance for new construction and substantial improvements to existing structures, provided that actual start of construction, repair, reconstruction, rehabilitation, addition placement, or other improvement is within 180 days after the date of issuance. The actual start of construction means the first placement of permanent construction of a building (including a manufactured home) on a site, such as the pouring of a slab or footings, installation of pilings or construction of columns.

Permanent construction does not include land preparation (such as clearing, excavation, grading, or filling), or the installation of streets or walkways, or excavation for a basement, footings, piers or foundations, or the erection of temporary forms, or the installation of accessory buildings such as garages or sheds not occupied as dwelling units or not part of the main building. For a substantial improvement, the actual “start of construction” means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

STOP WORK ORDER — Means a public notice placed on a building, structure, premise, dwelling unit, equipment and/or land pursuant section 20-18.

STRUCTURE — Means a walled and roofed building, a manufactured home or a gas or liquid storage tank that is principally above ground.

SUBSTANTIAL DAMAGE — Means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred. Substantial damage also means flood-related damages sustained by a structure on two separate occasions during a 10 – year period for which the cost of repairs at the time of such flood event, on the average, equals or exceeds 25 percent of the market value of the structure before the damage occurred.

SUBSTANTIAL IMPROVEMENT — Means any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the "start of construction" of the improvement. Substantial improvement also means “cumulative substantial improvement”. The term includes structures which have incurred "substantial damage", regardless of the actual repair work performed. The term does not, however, include either:

(1) Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the Code Enforcement Officer and which are the minimum necessary to assure safe living conditions; or

(2) Any alteration of a "Historic structure", provided that the alteration will not preclude the structure's continued designation as a "Historic structure".

UNIFORM CODE — Means the New York State Uniform Fire Prevention and Building Code, as currently in effect and as hereafter amended.

VARIANCE — Means a grant of relief from the requirements of this local law which permits construction or use in a manner that would otherwise be prohibited by this local law.

VILLAGE — Shall be deemed to be The Village of Brockport.

§ 20-5. **Applicability;**

This local law shall apply to all areas of special flood hazard within the jurisdiction of the Village of Brockport.

A. Every portion of a building or premises used or equipment, shall comply with the provisions of this code, irrespective of when such building shall have been constructed, altered or repaired, except as hereinafter provided.

B. Application of New York State Uniform Fire Prevention and Building Code. This code shall apply to residential property, one- and two-family dwellings, multiple dwellings, tourist homes, apartment houses and/or any other type of residential property. In addition, any commercial occupancies such as, but not limited to, stores and shops for retail purposes, bars and restaurants, private or public business uses, industrial manufacturing and processes, storage and warehousing. Hotels and motels serving transient guests and rest homes, convalescent homes and nursing homes whereby sleeping accommodations are provided, hospitals, religious facilities and private schools, day cares and municipal buildings, equipment therein and critical facilities as defined in section 20-4, as a part of in respect to any alterations to buildings or changes of use therein which may be caused directly or indirectly by the enforcement of this code shall be done in accordance with applicable sections of the New York State Uniform Fire Prevention and Building Code (the Uniform Code) and local law(s) of the Village of Brockport.

C. Conflict with other ordinances. In any case where a provision of this code is found to be in conflict with a provision of any zoning, building, fire, safety or health ordinance or code(s) of this Municipality, the County of Monroe, State of New York and Federal regulation(s), the provision which establishes the higher standard for the promotion and the protection of the safety and health of the people shall prevail. In any case where a provision of this code is found to be in conflict with a provision of any other ordinance of the code of the Village of Brockport existing on the effective date of this article which establishes a lower standard for the promotion and protection of the safety and health of the people, the provisions of this article shall prevail, and such other ordinances or codes and articles are hereby declared to be repealed to the extent that they may be found in conflict with this code.

D. Partial Invalidity; If any section of this Local Law shall be held unconstitutional, illegal, invalid, or otherwise unenforceable as violative of County, State, Federal or Local laws, the remainder of the Local Law shall remain in full force and effect, and enforceable as such.

E. Nothing in this code shall be deemed to abolish or impair existing remedies of the municipality or its officers or agencies relating to the removal or demolition of any buildings, which are deemed to be dangerous, unsafe or unsanitary.

F. Code Enforcement Officer; It shall be the duty and responsibility of the Code Enforcement Officer to enforce the provisions of Flood Damage Prevention as herein provided. The Code Enforcement Officer shall administer and enforce all the provisions of the Uniform Code, and the local law(s). The Code Enforcement Officer shall have the following powers and duties:

(1) To receive, review, and approve or disapprove applications for Building Permits, Certificates of Occupancy / Certificates of Compliance, Temporary Certificates of Occupancy / Certificates of Compliance, Floodplain Development Permits and plans, specifications, construction documents and matters required as submitted with all such applications;

(2) Upon approval of such applications, to issue Building Permits, Certificates of Occupancy / Certificates of Compliance, Temporary Certificates of Occupancy / Certificates of Compliance, Floodplain Development Permits and to include Building Permits, Certificates of Occupancy / Certificates of Compliance, Temporary Certificates of Occupancy / Certificates of Compliance, Floodplain Development Permits as such terms and conditions as the Code Enforcement Officer may determine to be appropriate;

(3) To conduct inspections including without limitations for construction, housing, building(s), structures, verification of use, property maintenance, any and all inspections to be made prior to the issuance of Building Permits, Certificates of Occupancy / Certificates of Compliance, Temporary Certificates of Occupancy / Certificates of Compliance, Floodplain Development Permits and Property Maintenance inspections incidental to the investigation of complaints, and all other inspections required or permitted under any provisions of any local laws; and/or others codes rules and/or regulations;

- (i) To issue Stop Work Orders;
- (ii) To review and investigate complaints;
- (iii) To issue orders pursuant to article IV section 20-35 of this local law;
- (iv) To maintain records;
- (v) To collect fee(s) as determined by resolution adopted by the Board of Trustees Village of Brockport as contained in the Village of Brockport Fee Schedule.
- (vi) To pursue administrative enforcement actions and proceedings;
- (vii) In consultation with the Village of Brockport Attorney, to pursue such legal actions and proceedings as may be necessary to enforce the Uniform Code, the Energy Code and local laws article/articles listed further in LL Chapter 59, or to abate or correct conditions not in compliance with the Uniform Code, the Energy Code or this article/articles and local laws;
- (viii) To exercise all other powers and fulfill all other duties conferred upon the Code Enforcement Officer by the local law(s).

G. The Code Enforcement Officer shall be employed by the Village of Brockport. The Code Enforcement Officer shall possess background experience related to building construction and fire prevention and shall, within the time prescribed by law, obtain such basic training, in-service training, advanced in-service training and other training as the State of New York shall require for code enforcement personnel, and the Code Enforcement Officer shall obtain certification from the State Fire Administrator pursuant to the Executive Law and the regulations promulgated thereunder.

H. One or more Inspectors may be employed by the Village of Brockport to act under the supervision and direction of the Code Enforcement Officer and to assist the Code Enforcement Officer in the exercise of the powers and fulfillment of the duties conferred upon the Code Enforcement Officer by the local law(s). Each Inspector shall, within the time prescribed by law, obtain such basic training, in-service training, advanced in-service training and other training as the State of New York shall

require for code enforcement personnel, and each Inspector shall obtain certification from the State Fire Administrator pursuant to the Executive Law and the regulations promulgated thereunder.

§ 20-6 **Basis for establishing areas of special flood hazard;**

A. This local law shall apply to all areas of special flood hazard within the jurisdiction of the Village of Brockport, Monroe County, State of New York. The areas of special flood hazard for the Village of Brockport, Community Number 360411, are identified and defined on the following documents prepared by the Federal Emergency Management Agency:

(1) Flood Insurance Rate Map Panel Numbers: 36055C0130G and 36055C0135G whose effective date is August 28, 2008, and any subsequent revisions to these map panels that do not affect areas under our community's jurisdiction.

(2) A scientific and engineering report entitled "Flood Insurance Study, Monroe County, New York, All Jurisdictions" dated August 28, 2008.

B. The above documents are hereby adopted and declared to be a part of this Local Law. The Flood Insurance Study and/or maps are on file at: The Village of Brockport municipal offices, 49 State Street Brockport, New York 14420

§ 20-7 **Effect on other laws; interpretation;**

A. This Local Law includes all revisions to the National Flood Insurance Program through October 27, 1997 and shall supersede all previous laws adopted for the purpose of flood damage prevention.

B. In their interpretation and application, the provisions of this local law shall be held to be minimum requirements, adopted for the promotion of the public health, safety and welfare. Whenever the requirements of this local law are at variance with the requirements of any other lawfully adopted rules, regulations or ordinances, the most restrictive or that imposing the higher standards shall govern.

§ 20-8 **Warning and disclaimer of liability;**

The degree of flood protection required by this local law is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes. This local law does not imply that land outside the areas of special flood hazard or uses permitted within such areas will be free from flooding or flood damages. This local law shall not create liability on the part of the Village of Brockport, any officer or employee thereof or the Federal Emergency Management Agency for any flood damages that result from reliance on this local law or any administrative decision lawfully made there under.

§ 20-9 **Designation of local administrator;**

The Code Enforcement Officer / Building Inspector is hereby designated the local administrator to administer and implement this local law by granting or denying development permit applications in accordance with its provisions.

§ 20-10 **Floodplain Development permit;**

A. A floodplain development permit is hereby established for all construction and other development to be undertaken in areas of special flood hazard in this community for the purpose of protecting its citizens from increased flood hazards and insuring that new development is constructed in a manner that minimizes its exposure to flooding. It shall be unlawful to undertake any development in an area of special flood hazard, as shown on the Flood Insurance Rate Map enumerated in Section 20-6, without a valid floodplain development permit. Application for a permit shall be made on forms furnished by the Local Administrator and may include, but not be limited to: plans, in duplicate, drawn to scale and showing: the nature, location, dimensions, and elevations of the area in question; existing or proposed structures, fill, storage of materials, drainage facilities, and the location of the foregoing.

§ 20-11 **Application for a permit;**

A. The applicant shall provide the following information as appropriate. Additional information may be required on the permit application form.

(1) The proposed elevation, in relation to mean sea level, of the lowest floor (including basement or cellar) of any new or substantially improved structure to be located in Zones A1-A30, AE or AH, or Zone A if base flood elevation data are available. Upon completion of the lowest floor, the permittee shall submit to the Local Administrator the as-built elevation, certified by a licensed professional engineer or surveyor.

(2) The proposed elevation, in relation to mean sea level, to which any new or substantially improved non-residential structure will be floodproofed. Upon completion of the floodproofed portion of the structure, the permittee shall submit to the Local Administrator the as-built floodproofed elevation, certified by a professional engineer or surveyor.

(3) A certificate from a licensed professional engineer or architect that any utility floodproofing will meet the criteria in Section 20-27, Utilities.

(4) A certificate from a licensed professional engineer or architect that any non-residential floodproofed structure will meet the floodproofing criteria in Section 20-29, Non-Residential Structures.

(5) A description of the extent to which any watercourse will be altered or relocated as a result of proposed development. Computations by a licensed professional engineer must be submitted that demonstrate that the altered or relocated segment will provide equal or greater conveyance than the original stream segment. The applicant must submit any maps, computations or other material required by the Federal Emergency Management Agency (FEMA) to revise the documents enumerated in Section 20-6, when notified by the Local Administrator, and must pay any fees or other costs assessed by FEMA for this purpose. The applicant must also provide assurances that the conveyance capacity of the altered or relocated stream segment will be maintained.

(6) A technical analysis, by a licensed professional engineer, if required by the Local Administrator, which shows whether proposed development to be located in an area of special flood hazard may result in physical damage to any other property.

(7) In Zone A, when no base flood elevation data are available from other sources, base flood elevation data shall be provided by the permit applicant for subdivision proposals and other proposed developments (including proposals for manufactured home and recreational vehicle parks and subdivisions) that are greater than either 50 lots or 5 acres.

(8) Fee; A fee specified in or determined in accordance with the provisions set forth as required by this article shall deposit with the Village of Brockport, application fee(s) as determined by resolution adopted by the Board of Trustees as contained in the Village of Brockport Fee Schedule. Payment of fee(s) shall be at the time of issuance of an application for a Permit, for an amended Permit, or for renewal of a Permit, or thereafter. Work shall not be commenced until and unless a Permit is issued.

§ 20-12 **Duties of the Local Administrator;**

Shall include, but not be limited to the following permit application review before issuing a floodplain development permit:

(1) Review all applications for completeness, particularly with the requirements of subsection § 20-11, and for compliance with the provisions and standards of this law.

(2) Review subdivision and other proposed new development, including manufactured home parks to determine whether proposed building sites will be reasonably safe from flooding. If a proposed building site is located in an area of special flood hazard, all new construction and substantial improvements shall meet the applicable standards of Section 20-22, Construction Standards and, in particular, sub-section 20-23 (1), Subdivision Proposals.

(3) Determine whether any proposed development in an area of special flood hazard may result in physical damage to any other property (e.g., stream bank erosion and increased flood velocities). The Local Administrator may require the applicant to submit additional technical analyses and data necessary to complete the determination. If the proposed development may result in physical damage to any other property or fails to meet the requirements of Section 20-22, Construction Standards, no permit shall be issued. The applicant may revise the application to include measures that mitigate or eliminate the adverse effects and re-submit the application.

(4) Determine that all necessary permits have been received from those governmental agencies from which approval is required by State or Federal law.

§ 20-13 **Use of other flood data;**

(1) When the Federal Emergency Management Agency has designated areas of special flood hazard on the community's Flood Insurance Rate map (FIRM) but has neither produced water surface elevation data (these areas are designated Zone A or V on the FIRM) nor identified a floodway, the Local Administrator shall obtain, review and reasonably utilize any base flood elevation and floodway data available from a Federal, State or other source, including data developed pursuant to paragraph 20-11 (7), as criteria for requiring that new construction, substantial improvements or other proposed development meet the requirements of this law.

(2) The local administrator shall have the authority to make interpretations when there appears to be a conflict between the limits of the federally identified areas of special flood hazard and actual field conditions.

(3) Base flood elevation data established pursuant to § 20-6 and/or § 20-13, when available, shall be used to accurately delineate the areas of special flood hazard.

(4) When base flood elevation data are not available, the Local Administrator may use flood information from any other authoritative source, such as historical data, to establish flood elevations within the areas of special flood hazard, for the purposes of this law.

§ 20-14 **Alteration of watercourses;**

(1) Notification to adjacent communities and the New York State Department of Environmental Conservation prior to permitting any alteration or relocation of a watercourse, and submittal of evidence of such notification to the Regional Director, Region II, Federal Emergency Management Agency.

(2) Determine that the permit holder has provided for maintenance within the altered or relocated portion of said watercourse so that the flood carrying capacity is not diminished.

§ 20-15 **Construction stage;**

(1) In Zones A1-A30, AE and AH, and also Zone A if base flood elevation data are available, upon placement of the lowest floor or completion of floodproofing of a new or substantially improved structure, obtain from the permit holder a certification of the as-built elevation of the lowest floor or floodproofed elevation, in relation to mean sea level. The certificate shall be prepared by or under the direct supervision of a licensed land surveyor or professional engineer and certified by same. For manufactured homes, the permit holder shall submit the certificate of elevation upon placement of the structure on the site. A certificate of elevation must also be submitted for a recreational vehicle if it remains on a site for 180 consecutive days or longer (unless it is fully licensed and ready for highway use).

(2) Any further work undertaken prior to submission and approval of the certification shall be at the permit holder's risk. The Local Administrator shall review all data submitted. Deficiencies detected shall be cause to issue a stop work order for the project unless immediately corrected.

§ 20-16 **Inspections;**

A. The Local Administrator and/or the developer's engineer or architect shall make periodic inspections at appropriate times throughout the period of construction in order to monitor compliance with permit conditions and enable said inspector to certify, if requested, that the development is in compliance with the requirements of the floodplain development permit and/or any variance provisions. The Code Enforcement Officer shall make or cause to be made inspections in order to safeguard the safety, health and welfare of the public under the provisions of this code. The Code Enforcement Officer is authorized to enter any dwelling, building, premises and lands at any reasonable time for the purpose of performing his duties under this code. The owner, operator, occupant, permit holder or the person in charge thereof, shall give the Code Enforcement Officer free access thereto and to all parts thereof at reasonable times for the purpose of such inspection(s), examination(s) and survey(s).

B. The Code Enforcement Officer shall make or cause to be made inspections to determine the conditions of dwellings, buildings, structures, multiple dwellings, dwellings, premises and lands in order to safeguard the safety, health and welfare of the public under the provisions of this code. The Code Enforcement Officer is authorized to enter any dwelling, building, structure, multiple dwelling, premises and lands at any reasonable time for the purpose of performing his duties under this code. The owner, operator or occupant of every dwelling, building, structure multiple dwelling, premises and lands or the person in charge thereof, shall give the Code Enforcement Officer free access thereto and to all parts thereof on which it is located at all reasonable times for the purpose of such inspection, examination and survey.

C. It shall be unlawful for any person to refuse entrance or impede an inspector or officer authorized under this code in the performance of his duties, and every such inspector or officer shall have the right to enter, examine and survey all lands, structures, dwellings, buildings and multiple dwellings, premises and every part thereof at all reasonable times upon display of proper identification.

D. Access by owner or operator. Every occupant of a premises, lands, structures, dwellings, buildings and multiple dwellings, shall give the owner or operator thereof or his agent or employee access to any part of such dwelling unit, rooming unit or its premises at reasonable times for the purpose of making such inspections, maintenance, repairs or alterations as are necessary to comply with the provisions of this code.

E. Application for search warrant. If in the opinion of the Code Enforcement Officer, s/he has been unreasonably and unlawfully refused entry into the premises for purposes of inspection, s/he shall apply forthwith for an administrative search warrant, said application to be brought before a Town Justice of the Town of Sweden Justice Court. Upon the issuance of said warrant, the Code Enforcement Officer shall conduct the inspection as per the conduct and procedures provided for in this code.

F. Coordination of enforcement. Inspection of premises and the issuing of orders in connection therewith under the provisions of this code shall be the exclusive responsibility of the Codes Office of the municipality. Wherever, in the opinion of the Codes Official, it is necessary or desirable to have inspections of any condition by any other departments, shall arrange for this to be done in such manner that the owners or occupants of buildings shall not be subjected to visits by numerous inspectors or to multiple or conflicting orders. No order for correction of any violation under this code shall be issued without the approval of the Code Enforcement Officer, and it shall be the responsibility of the Inspector before issuing any such order to determine that it has the concurrence of any other department or official of the government concerned with any matter involved in the case in question.

G. Administrative liability. Except as may otherwise be provided by statute, local law or ordinance, no office, agent or employee of the municipality charged with the enforcement of the Flood Damage Prevention local law shall render himself personally liable for any damage that may occur to persons or property as a result of any act required or permitted in the discharge of his duties under this code. No person who institutes or assists in the prosecution of a criminal proceeding under this code shall be liable to damage hereunder unless he acted with actual malice and without reasonable grounds for believing that the person accused or prosecuted was guilty of an unlawful act or omission. Any suit brought against any Mayor, Trustee(s) of the Village of Brockport, officer, agent or employee of the municipality, as a result of any act required or permitted in the discharge of his duties under this code, shall be defended by the legal representative of the municipality at no cost to the Mayor, Trustee(s) of

the Village of Brockport, officer, agent or employee of the municipality, until the final determination of the proceedings therein.

§ 20-17 **Construction Inspections**

A. Construction work shall remain accessible and exposed until inspected and accepted by the Code Enforcement Officer or by an Inspector authorized by the Code Enforcement Officer. The Permit Holder shall notify the Code Enforcement Officer when any element of work is ready for inspection(s). Any further work undertaken prior to submission and approval of the certification shall be at the permit holder's risk. The Local Administrator shall review all data submitted. Deficiencies detected shall be cause to issue a stop work order for the project unless immediately corrected.

B. Construction Inspection results; Either after inspection(s), or review of submitted Certification document(s) the work or a portion thereof or document(s) shall be noted as satisfactory as completed, or the permit/applicant holder shall be notified as to where the work fails to comply with the permit requirements. Work not in compliance with any applicable provision of this article shall remain exposed until such work shall have been brought into compliance with all applicable provisions of the local law re-inspected, and found satisfactory as completed.

§ 20-18 **Stop Work Order;**

A. Authority to issue. The Local Administrator (Code Enforcement Officer) is authorized to issue Stop Work Orders pursuant to this Local Law. The Local Administrator (Code Enforcement Officer) shall issue, or cause to be issued, a stop work order for any floodplain development found non-compliant with the provisions of this law and/or the conditions of the development permit. Disregard of a stop work order shall subject the violator to the penalties described in Section 20-35 F of this local law.

(1) Any work that is determined by the Local Administrator (Code Enforcement Officer) to be contrary to any applicable provision of the Uniform Code or this local laws, without regard to whether such work is or is not work for which a Permit or approvals are required, and without regard to whether a Permit or approval has or has not been issued for such work, or

(2) Any work that is being conducted in a dangerous or unsafe manner in the opinion of the Local Administrator (Code Enforcement Officer), without regard to whether such work is or is not work for which a Permit or approval is required, and without regard to whether a Permit or approval has or has not been issued for such work, or

(3) Any work for which a Permit or approval is required which is being performed without the required Permit or approval or under a Permit or approval that has become invalid, has expired, or has been suspended or revoked.

B. Content of Stop Work Orders. Stop Work Orders shall: (1) be in writing, (2) be dated and signed by the Local Administrator (Code Enforcement Officer), (3) state the reason or reasons for issuance, and (4) if applicable, state the conditions which must be satisfied before work will be permitted to resume.

C. Service of Stop Work Orders. The Local Administrator (Code Enforcement Officer) shall cause the Stop Work Order, or a copy thereof, to be served on the owner of the affected property (and, if the owner is not the permit applicant holder, on the Permit Holder) personally or by registered

mail / certified mail. The Code Enforcement Officer shall be permitted, but not required, to cause the Stop Work Order, or a copy thereof, to be served on any builder, architect, tenant, contractor, subcontractor, construction superintendent, or their agents, or any other Person taking part or assisting in work affected by the Stop Work Order, personally or by registered mail / certified mail; provided, however, that failure to serve any Person mentioned in this sentence shall not affect the efficacy of the Stop Work Order.

D. Effect of Stop Work Order. Upon the issuance of a Stop Work Order, the owner of the affected property, the Permit Holder and any other Person performing, taking part in or assisting in the work shall immediately cease all work which is the subject of the Stop Work Order.

E. Remedy not exclusive. The issuance of a Stop Work Order shall not be the exclusive remedy available to address any event described in subdivision (A) of this section, and the authority to issue a Stop Work Order shall be in addition to, and not in substitution for or limitation of, the right and authority to pursue any other remedy or impose any other penalty under Article IV Section 20-35 F of this local law or under any other applicable local law or State law. Any such other remedy or penalty may be pursued at any time, whether prior to, at the time of, or after the issuance of a Stop Work Order.

§ 20-19 **Complaints;**

A. The Code Enforcement Officer shall review and investigate complaints which allege or assert the existence of conditions or activities that fail to comply with the Uniform Code or this local law, ordinance or regulation adopted for administration and enforcement of the Uniform Code and this local law. The process for responding to a complaint shall include the following steps as the Code Enforcement Officer, at his discretion, may deem to be appropriate:

- (1) Performing an inspection of the conditions and/or activities alleged to be in violation, and documenting the results of such inspection;
- (2) If a violation is found to exist, providing the owner of the affected property and any other person(s) who may be responsible for the violation with notice of the violation and opportunity to abate, correct or cure the violation, or otherwise proceeding in the manner described in section 20-35 of the local law;
- (3) If appropriate, issuing a Stop Work Order, and
- (4) If a violation which was found to exist is abated or corrected, performing an inspection to ensure that the violation has been abated or corrected, preparing a final written report reflecting such abatement or correction, and filing such report.

§ 20-20 **Certificate of Compliance;**

A. In areas of special flood hazard, as determined by documents enumerated in Section 20-6, it shall be unlawful to occupy or to permit the use or occupancy of any building or premises, or both, or part thereof hereafter created, erected, changed, converted or wholly or partly altered or enlarged in its use or structure until a certificate of compliance has been issued by the Local Administrator stating that the building or land conforms to the requirements of this local law.

B. A certificate of compliance shall be issued by the Local Administrator upon satisfactory completion of all development in areas of special flood hazard.

C. Issuance of the certificate shall be based upon the inspections conducted as prescribed in Section § 20-16 and § 20-17, inspections, and/or any certified elevations, hydraulic data, floodproofing, anchoring requirements or encroachment analyses which may have been required as a condition of the approved permit.

§ 20-21 Information to be retained;

A. The Local Administrator shall retain and make available for inspection, copies of the following:

- (i) Floodplain development applications, plans and specifications, permits inspection(s), all statements and reports issued and certificates of compliance.
- (ii) Certifications of as-built lowest floor elevations of structures, required pursuant to sub-sections 20-13 (1) and 20-13 (2), and whether or not the structures contain a basement;
- (iii) Floodproofing certificates required pursuant to sub-section 20-13, and whether or not the structures contain a basement;
- (iv) Variances issued pursuant to Section 20-31, Variance Procedures; and,
- (v) Notices required under sub-section 20-14(1), Alteration of Watercourses.

ARTICLE II

CONSTRUCTION STANDARDS

§ 20-22 General standards for flood hazard reduction.

The following standards apply to new development, including new and substantially improved structures, in the areas of special flood hazard shown on the Flood Insurance Rate Map designated in Section 20-6.

§ 20-23 Subdivision Proposals;

The following standards apply to all new subdivision proposals and other proposed development in areas of special flood hazard (including proposals for manufactured home and recreational vehicle parks and subdivisions):

- (1) Proposals shall be consistent with the need to minimize flood damage;
- (2) Public utilities and facilities such as sewer, gas, electrical and water systems shall be located and constructed so as to minimize flood damage; and,
- (3) Adequate drainage shall be provided to reduce exposure to flood damage.

§ 20-24 **Encroachments;**

A. Within Zones A1-A30 and AE, on streams without a regulatory floodway, no new construction, substantial improvements or other development (including fill) shall be permitted unless:

(i) the applicant demonstrates that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any location, or,

(ii) the Village of Brockport agrees to apply to the Federal Emergency Management Agency (FEMA) for a conditional FIRM revision, FEMA approval is received and the applicant provides all necessary data, analyses and mapping and reimburses the Village of Brockport for all fees and other costs in relation to the application. The applicant must also provide all data, analyses and mapping and reimburse the Village of Brockport for all costs related to the final map revision.

B. On streams with a regulatory floodway, as shown on the Flood Boundary and Floodway Map or the Flood Insurance Rate Map adopted in Section 20-6, no new construction, substantial improvements or other development in the floodway (including fill) shall be permitted unless:

(i) a technical evaluation by a licensed professional engineer shows that such an encroachment shall not result in any increase in flood levels during occurrence of the base flood, or,

(ii) the Village of Brockport agrees to apply to the Federal Emergency Management Agency (FEMA) for a conditional FIRM and floodway revision, FEMA approval is received and the applicant provides all necessary data, analyses and mapping and reimburses the Village of Brockport for all fees and other costs in relation to the application. The applicant must also provide all data, analyses and mapping and reimburse the Village of Brockport for all costs related to the final map revisions.

C. Whenever any portion of a floodplain is authorized for development, the volume of space occupied by the authorized fill or structure below the base flood elevation shall be compensated for and balanced by a hydraulically equivalent volume of excavation taken from below the base flood elevation at or adjacent to the development site. All such excavation shall be constructed to drain freely to the watercourse. No area below the waterline of a pond or other body of water can be credited as a compensating excavation.

§ 20-25 **Standards for all structures;**

A. Anchoring; New structures and substantial improvement to structures in areas of special flood hazard shall be anchored to prevent flotation, collapse, or lateral movement during the base flood. This requirement is in addition to applicable State and local anchoring requirements for resisting wind forces.

§ 20-26 **Construction materials and methods;**

A. New construction and substantial improvements to structures shall be constructed with materials and utility equipment resistant to flood damage.

B. New construction and substantial improvements to structures shall be constructed using methods and practices that minimize flood damage.

C. For enclosed areas below the lowest floor of a structure within Zones A1-A30, AE or AH, and also Zone A if base flood elevation data are available, new and substantially improved structures shall have fully enclosed areas below the lowest floor that are useable solely for parking of vehicles, building access or storage in an area other than a basement and which are subject to flooding, designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of flood waters. Designs for meeting this requirement must either be certified by a licensed professional engineer or architect or meet or exceed the following minimum criteria:

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

(ii) the bottom of all such openings no higher than one foot above the lowest adjacent finished grade.

D. Openings may be equipped with louvers, valves, screens or other coverings or devices provided they permit the automatic entry and exit of floodwaters. Enclosed areas sub-grade on all sides are considered basements and are not permitted.

§ 20-27 **Utilities;**

A. New and replacement electrical equipment, heating, ventilating, air conditioning, plumbing connections, and other service equipment shall be located at or above the base flood elevation or be designed to prevent water from entering and accumulating within the components during a flood and to resist hydrostatic and hydrodynamic loads and stresses. Electrical wiring and outlets, switches, junction boxes and panels shall be elevated to or above the base flood elevation unless they conform to the appropriate provisions of the electrical part of the Building Code of New York State or the Residential Code of New York State for location of such items in wet locations;

B. New and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system;

C. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters. Sanitary sewer and storm drainage systems for buildings that have openings below the base flood elevation shall be provided with automatic backflow valves or other automatic backflow devices that are installed in each discharge line passing through a building's exterior wall; and,

D. On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

§ 20-28

Residential Structures;

- A. Elevation; The following standards apply to new and substantially improved residential structures located in areas of special flood hazard, in addition to the requirements in sub-sections 20-23 A (1), Subdivision Proposals, and 20-24, Encroachments, and Section 20-25, Standards for all Structures.
- B. Within Zones A1-A30, AE and AH and also Zone A if base flood elevation data are available, new construction and substantial improvements shall have the lowest floor (including basement) elevated to or above two feet above the base flood elevation.
- C. Within Zone A, when no base flood elevation data are available, new and substantially improved structures shall have the lowest floor (including basement) elevated at least three feet above the highest adjacent grade.
- D. Within Zone AO, new and substantially improved structures shall have the lowest floor (including basement) elevated above the highest adjacent grade at least as high as two feet above the depth number specified in feet on the community's Flood Insurance Rate Map enumerated in Section 20-6 (at least two feet if no depth number is specified).
- E. Within Zones AH and AO, adequate drainage paths are required to guide flood waters around and away from proposed structures on slopes.

§ 20-29

Non-Residential Structures;

- A. The following standards apply to new and substantially improved commercial, industrial and other non-residential structures located in areas of special flood hazard, in addition to the requirements in sub-sections 20-23, Subdivision Proposals, and 20-24, Encroachments, and Section 20-25, Standards for all Structures.
- B. Within Zones A1-A30, AE and AH, and also Zone A if base flood elevation data are available, new construction and substantial improvements of any non-residential structure, together with attendant utility and sanitary facilities, shall either:
 - (a) have the lowest floor, including basement or cellar, elevated to or above two feet above the base flood elevation; or
 - (b) be floodproofed so that the structure is watertight below two feet above the base flood elevation with walls substantially impermeable to the passage of water. All structural components located below the base flood level must be capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy.
- C. Within Zone AO, new construction and substantial improvements of non-residential structures shall:
 - (a) have the lowest floor (including basement) elevated above the highest adjacent grade at least as high as two feet above the depth number specified in feet on the community's FIRM (at least two feet if no depth number is specified), or

(b) together with attendant utility and sanitary facilities, be completely floodproofed to that level to meet the floodproofing standard specified in sub-section 20-29 B (b).

D. If the structure is to be floodproofed, a licensed professional engineer or architect shall develop and/or review structural design, specifications, and plans for construction. A Floodproofing Certificate or other certification shall be provided to the Local Administrator that certifies the design and methods of construction are in accordance with accepted standards of practice for meeting the provisions of Section 20-29 B (b), including the specific elevation (in relation to mean sea level) to which the structure is to be floodproofed.

E. Within Zones AH and AO, adequate drainage paths are required to guide flood waters around and away from proposed structures on slopes.

F. Within Zone A, when no base flood elevation data are available, the lowest floor (including basement) shall be elevated at least three feet above the highest adjacent grade.

§ 20-30 **Manufactured Homes and Recreational Vehicles;**

A. The following standards in addition to the standards in Section 20-22, General Standards, and Section 20-25, Standards for all Structures apply, as indicated, in areas of special flood hazard to manufactured homes and to recreational vehicles which are located in areas of special flood hazard.

B. Recreational vehicles placed on sites within Zones A1-A30, AE and AH shall either:

(i) be on site fewer than 180 consecutive days,

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

(iii) meet the requirements for manufactured homes in paragraphs 20-30 (C), (D) and (E).

A recreational vehicle pursuant to Local law Chapter 51 is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices and has no permanently attached additions.

C. A manufactured home that is placed or substantially improved in Zones A1-A30, AE and AH shall be elevated on a permanent foundation such that the lowest floor is elevated to or above two feet above the base flood elevation and is securely anchored to an adequately anchored foundation system to resist flotation, collapse and lateral movement.

D. Within Zone A, when no base flood elevation data are available, new and substantially improved manufactured homes shall be elevated such that the manufactured home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than 36 inches in height above grade and are securely anchored to an adequately anchored foundation system to resist flotation, collapse or lateral movement.

E. Within Zone AO, the floor shall be elevated above the highest adjacent grade at least as high as the depth number specified on the Flood Insurance Rate Map enumerated in Section 20-6 (at least two feet if no depth number is specified).

§ 20-31 **Critical Facilities;**

A. In order to prevent potential flood damage to certain critical facilities that would result in serious damage to life and health, or widespread social or economic dislocation, no new critical facilities shall be located within any Area of Special Flood Hazard, or within any 500-year flood zone shown as a B zone or a shaded X zone on the Community's Flood Insurance Rate Map.

ARTICLE III

VARIANCE PROCEDURE

§ 20-32 **Variance Procedure, Appeals Board;**

A. The Zoning Board of Appeals as established by the Village of Brockport shall hear and decide appeals and requests for variances from the requirements of this local law.

B. The Zoning Board of Appeals shall hear and decide appeals when it is alleged there is an error in any requirement, decision, or determination made by the Local Administrator in the enforcement or administration of this local law.

C. Those aggrieved by the decision of the Zoning Board of Appeals may appeal such decision to the Supreme Court pursuant to Article 78 of the Civil Practice Law and Rules.

D. In passing upon such applications, the Zoning Board of Appeals, shall consider all technical evaluations, all relevant factors, standards specified in other sections of this local law and:

(i) the danger that materials may be swept onto other lands to the injury of others;

(ii) the danger to life and property due to flooding or erosion damage;

(iii) the susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;

(iv) the importance of the services provided by the proposed facility to the community;

(v) the necessity to the facility of a waterfront location, where applicable;

(vi) the availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;

(vii) the compatibility of the proposed use with existing and anticipated development;

(viii) the relationship of the proposed use to the comprehensive plan and floodplain management program of that area;

(ix) the safety of access to the property in times of flood for ordinary and emergency vehicles;

(x) the costs to local governments and the dangers associated with conducting search and rescue operations during periods of flooding;

(xi) the expected heights, velocity, duration, rate of rise and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site; and

(xii) the costs of providing governmental services during and after flood conditions, including search and rescue operations, maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems and streets and bridges.

E. Upon consideration of the factors of Section 20-32 D and the purposes of this local law, the Zoning Board of Appeals may attach such conditions to the granting of variances as it deems necessary to further the purposes of this local law.

F. The Local Administrator shall maintain the records of all appeal actions including technical information and report any variances to the Federal Emergency Management Agency upon request.

§ 20-33 **Conditions for Variances;**

A. Generally, variances may be issued for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing items (i-xii) in Section 20-32 D have been fully considered. As the lot size increases beyond the one-half acre, the technical justification required for issuing the variance increases.

B. Variances may be issued for the repair or rehabilitation of historic structures upon determination that:

(i) the proposed repair or rehabilitation will not preclude the structure's continued designation as a "Historic structure"; and

(ii) the variance is the minimum necessary to preserve the historic character and design of the structure.

C. Variances may be issued by a community for new construction and substantial improvements and for other development necessary for the conduct of a functionally dependent use provided that:

(i) the criteria of subparagraphs A, D, E, and F of this Section are met; and

(ii) the structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threat to public safety.

D. Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.

E. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

F. Variances shall only be issued upon receiving written justification of:

(i) a showing of good and sufficient cause;

(ii) a determination that failure to grant the variance would result in exceptional hardship to the applicant; and

(iii) a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public or conflict with existing local laws or ordinances.

G. Any applicant to whom a variance is granted for a building with the lowest floor below the base flood elevation shall be given written notice over the signature of a community official that:

(i) the issuance of a variance to construct a structure below the base flood level will result in increased premium rates for flood insurance up to amounts as high as \$25 for \$100 of insurance coverage; and

(ii) such construction below the base flood level increases risks to life and property.

H. Such notification shall be maintained with the record of all variance actions as required in Section 20-21 A of this Local Law.

ARTICLE IV

ADMINISTRATION

§ 20-34 **Enforcement, Penalties for offenses, other remedies, notification of noncompliance;**

A. No structure shall hereafter be constructed, located, extended, converted or altered and no land shall be excavated or filled without full compliance with the terms of this local law and any other applicable regulations. Any infraction of the provisions of this local law by failure to comply with any of its requirements, including infractions of conditions and safeguards established in connection with conditions of the permit, shall constitute a violation. Any person who violates this local law or fails to comply with any of its requirements shall, upon conviction thereof, be fined no more than \$350 or imprisoned for not more than 15 days, or both. Each day of noncompliance shall be considered a separate offense. Nothing herein contained shall prevent the Village of Brockport from taking such other lawful action as necessary to prevent or remedy an infraction. Any structure found not compliant with the requirements of this local law for which the developer and/or owner has not applied for and received an approved variance under §§ 20-32 and 20-33 will be declared noncompliant, and notification will be sent to the Federal Emergency Management Agency.

B. The Code Enforcement Officer of the Village of Brockport and such assistant CEO's, and/or assistant Code Enforcement Officers, collectively the "Code Enforcement Officers" hereunder – is/are the official(s) authorized to enforce the provisions of these articles, by notice, ticketing, etc., or such other enforcement procedure means and methods set forth in the Code, or otherwise permitted by law.

C. No structure in an area of special flood hazard shall hereafter be constructed, located, extended, converted, or altered and no land shall be excavated or filled without full compliance with the terms of this local law and any other applicable regulations. Any infraction of the provisions of this local law by failure to comply with any of its requirements, including infractions of conditions and safeguards

established in connection with conditions of the permit, shall constitute a violation. Any person who violates this local law or fails to comply with any of its requirements shall, upon conviction thereof, be fined no more than \$350 or imprisoned for not more than 15 days or both. Each day of noncompliance shall be considered a separate offense. Nothing herein contained shall prevent the Village of Brockport from taking such other lawful action as necessary to prevent or remedy an infraction. Any structure found not compliant with the requirements of this local law for which the developer and/or owner has not applied for and received an approved variance under Section 20-32 will be declared non-compliant and notification sent to the Federal Emergency Management Agency.

§ 20-35 **Notice of violations; penalties for offenses**

A. Notice of violation; When the Village of Brockport determines that activity is not being carried out in accordance with the requirements of this article, the Code Enforcement Officer shall issue a written notice of violation/violations to the owner, owners agent and/or resident e.g. tenant/tenants.

B. Informal Compliance Orders; The Code Enforcement Officer is authorized to order in writing the remedying of any condition or activity found to exist in, on, or about any building, structure, or premises in violation(s) of this article or local law(s). Upon finding that any such condition or activity exists, the Code Enforcement Officer can issue an informal (voluntary compliance) order either in writing or verbally.

C. Compliance Orders; The Code Enforcement Officer is authorized to order in writing the remedying of any condition or activity found to exist in, on, or about any building, structure, or premises in violation of this article or local law(s). Upon finding that any such condition or activity exists, the Code Enforcement Officer shall issue a Compliance Order.

The Compliance Order shall;

- (i) Be in writing;
- (ii) Be dated and signed by the Code Enforcement Officer;
- (iii) Specify the condition or activity that violates this article or local law(s);
- (iv) Specify the provision or provisions of the Uniform Code, the Energy Code, this article or local law(s) which is/are violated by the specified condition or activity;
- (v) Specify the period of time which the Code Enforcement Officer deems to be reasonably necessary for achieving compliance;
- (vi) Direct that compliance be achieved within the specified period of time; and state that an action or proceeding to compel compliance may be instituted if compliance is not achieved within the specified period of time.

D. The Code Enforcement Officer shall cause the Compliance Order, or a copy thereof, to be served on the owner of the affected property personally or by registered mail / certified mail. The Code Enforcement Officer shall be permitted, but not required, to cause the Compliance Order, or a copy thereof, to be served on any property manager or agent, builder, architect, tenant(s), contractor, subcontractor, construction superintendent, or their agents, or any other person(s) taking part or assisting in work or use being performed or occurring at the affected property personally or by registered mail / certified mail; provided, however, that failure to serve any person(s) mentioned in this sentence shall not affect the efficacy of the Compliance Order.

E. Appearance Tickets. The Code Enforcement Officer and each Inspector under the provisions of the Codes Office are authorized to issue appearance tickets for any violation of this article or local law(s) when in the opinion of the Code Enforcement Officer and/or each Inspector there has been aggressive ongoing violation/violations of this article or local law(s) that materially affects either life-safety or person/persons and/or the public or the property is unsanitary and/or made a hazardous / unsafe structure or equipment condition. The Code Enforcement Officer and/or each Inspector can issue Appearance Tickets forgoing pursuant to Local law Chapter 36 section 36-20 B & C, as per the authorization of Local Law Chapter 59 Section 59-1.

F. Civil Penalties. In addition to those penalties prescribed by State law, any Person who violates any provision of the Uniform Code, this local law, or any term or condition of any Building Permit, Certificate of Occupancy / Certificate of Compliance, Temporary Certificate, Floodplain Development Permit, Stop Work Order, or other notice or order issued by the Code Enforcement Officer pursuant to any provision of this article or local law(s), shall be liable to a civil penalty of not more than \$350.00 for each day or part thereof during which such violation continues. Each day on which any violation of any of the provisions of this ordinance occurs shall constitute one offense and each successive day of violation shall constitute a separate and distinct offense. Upon conviction of any such violation, such person, partnership, or corporation shall be punished by a fine of not more than \$350.00 for each offense. In addition to any other penalty authorized by this section, any person, partnership, or corporation convicted of violating any of the provisions of this article and/or local law(s) shall be required to bear the expense of such compliance. Any person who violates the provisions of this article and or local law(s) shall be subject to a fine not exceeding three hundred fifty dollars (\$350.00) or imprisonment for a period not to exceed six months, or both for conviction of a first offense; for conviction of a second offense, both of which were committed within a period of five years, punishable by a fine not less than \$350.00 nor more than seven hundred dollars (\$700.00) or imprisonment for a period not to exceed six months, or both; and upon conviction for a third or subsequent offense all of which were committed within a period of five years, punishable by a fine not less than \$700.00 nor more than one thousand dollars (\$1000.00) or imprisonment for a period not to exceed six months, or both. However, for the purposes of conferring jurisdiction upon courts and judicial officers generally, violations of this article or local law(s) shall be deemed misdemeanors and for such purpose only all provisions of law relating to misdemeanors shall apply to such violations. Each week's continued violation shall constitute a separate additional violation. The civil penalties provided by this subdivision shall be recoverable in an action instituted in the name of the Village of Brockport.

G. Injunctive Relief; An action or proceeding may be instituted in the name of this Village of Brockport, in a court of competent jurisdiction, to prevent, restrain, enjoin, correct, or abate any violation of, or to enforce, any provision of the Uniform Code, this article or local law(s), or any term or condition of any Building Permit, Certificate of Occupancy / Certificate of Compliance, Temporary Certificate, Stop Work Order, Floodplain Development Permit, Compliance Order, or other notice or order issued by the Code Enforcement Officer pursuant to any provision of this local law. In particular, but not by way of limitation, where the construction or use of a building or structure is in violation of any provision of the Uniform Code, or this article or local law(s), or any Stop Work Order, Compliance Order or other order obtained under the Uniform Code, or this article or local law(s), an action or proceeding may be commenced in the name of the Village of Brockport, in the Supreme Court or in any other court having the requisite jurisdiction, to obtain an order directing the removal of the building or structure or an abatement of the condition in violation(s) of such provisions. No action

or proceeding described in this subdivision shall be commenced without the appropriate authorization from the Board of Trustees of this Village of Brockport.

H. Remedies Not Exclusive; No remedy or penalty specified in this section shall be the exclusive remedy or penalty available to address any violation described in this section, and each remedy or penalty specified in this section shall be in addition to, and not in substitution for or limitation of, the other remedies or penalties specified in this section, in section 20-18 (Stop Work Orders) of this article or local law, in any other section of the local law(s), or in any other applicable law. Any remedy or penalty specified in this section may be pursued at any time, whether prior to, simultaneously with, or after the pursuit of any other remedy or penalty specified in this section, in section 20-18 (Stop Work Orders) of this article or local law, in any other section of local law(s), or in any other applicable law. In particular, but not by way of limitation, each remedy and penalty specified in this section shall be in addition to, and not in substitution for or limitation of, the penalties specified in subdivision (2) of section 382 of the Executive Law, and any remedy or penalty specified in this section may be pursued at any time, whether prior to, simultaneously with, or after the pursuit of any penalty specified in subdivision (2) of section 382 of the Executive Law.

§ 20-36 **Validity;**

A. Severability. If any section, subsection, paragraph, sentence, clause or phrase of this code shall be declared invalid for any reason whatsoever, such decision shall not affect the remaining portions of this code, which shall continue in full force and effect, and to this end the provisions of this code are hereby declared to be severable.

B. Saving clause. This code shall not affect violations of any other ordinance, code or regulation of the municipality existing prior to the effective date hereof, and any such violation shall be governed and shall continue to be punishable to the full extent of the law under the provisions of those ordinances, codes or regulations in effect at the time the violation was committed.

§ 20-37 **Effective Date;**

This local law shall take effect immediately upon filing in the office of the New York State Secretary of State in accordance with section 27 of the Municipal Home Rule Law.

