

CHAPTER 34A

FLOOD DAMAGE PREVENTION

§ 34A-1. Findings 3401A

§ 34A-2. Purpose 3402A

§ 34A-3. Objectives 3402A

§ 34A-4. Definitions 3403A

§ 34A-5. Applicability 3407A

§ 34A-6. Basis for establishing areas of special flood hazard 3407A
 [Amended 10-3-1989 by L.L. #3-1989]

§ 34A-7. Interpretation; conflict with other laws 3408A

§ 34A-8. Severability 3408A

§ 34A-9. Penalties for offenses 3408A

§ 34A-10. Warning and disclaimer of liability 3409A

§ 34A-11. Designation of local administrator 3409A

§ 34A-12. Development permit 3409A

§ 34A-13. Duties of local administration 3410A

§ 34A-14. General standards for flood hazard reduction 3413A

§ 34A-15. Specific standards for flood hazard reduction 3416A

§ 34A-16. Floodways 3418A

§ 34A-17. Board of Appeals 3419A

§ 34A-18. Conditions for variances 3420A

[HISTORY: Adopted by the Common Council of the City of Dunkirk 4-21-1987 as Local Law #2-1987. Amendments noted where applicable.]

General References

Zoning - See Ch. 79.

§ 34A-1. Findings.

The Common Council of the City of Dunkirk finds that the potential and/or actual damages from flooding and erosion may be a problem to the residents of the City of Dunkirk 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 chapter is adopted.

§ 34A-2. Purpose.

It is the purpose of this chapter 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. **[Editor's Note: This local law also provided for the supersession of former Ch. 34A, Flood Damage Prevention, adopted 12-16-1980]**
- B. Require that uses vulnerable to floods, including facilities which serve such uses, be 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

§ 34A-3. Objectives.

The objectives of this chapter are to:

- A. Protect human life and health.
- B. Minimize expenditure of public money for costly flood control projects.
- C. Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public.
- D. Minimize prolonged business interruptions.

- E. Minimize damage to public facilities and utilities, such as water and gas mains, electric, telephone and sewer lines and streets and bridges located in areas of special flood hazard.
- F. 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. Provide that developers are notified that property is in an area of special flood hazard.
- H. Ensure that those who occupy the areas of special flood hazard assume responsibility for their actions.

§ 34A-4. Definitions.

- A. Unless specifically defined below, words or phrases used in this chapter shall be interpreted so as to give them the meaning they have in common usage and to give this chapter its most reasonable application.
- B. As used in this chapter, the following terms shall have the meanings indicated:

APPEAL – A request for a review of the local administrator’s interpretation of any provision of this chapter or a request for a variance.

AREA OF SHALLOW FLOODING - A designated AO or VO Zone on a community’s Flood Insurance Rate Map (FIRM) with base flood depths from one (1) to three (3) feet, where a clearly defined channel does not exist, where the path of flooding is unpredictable and indeterminate and where velocity flow may be evident.

AREA OF SPECIAL FLOOD HAZARD - 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, A1-99, V, VO, VE or V1-30. It is also commonly referred to as the “base floodplain” or “one-hundred-year-floodplain.”

BASE FLOOD - The flood having a one-percent chance of being equaled or exceeded in any given year.

BASEMENT - That portion of a building having its floor subgrade (below ground level) on all sides.

BREAKAWAY WALL - 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 – Any structure built for support, shelter or enclosure for occupancy or storage.

CELLAR - The same meaning as “basement.”

COASTAL HIGH HAZARD AREA - The area subject to high-velocity waters, including but not limited to hurricane wave wash. The area is designated on a FIRM as Zone V1-30, VE, VO or V.

DEVELOPMENT - 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, located within the area of special flood hazard.

ELEVATED BUILDING - A nonbasement building built to have the lowest flood elevated above the ground level by means of fill, solid foundation perimeter wall, pilings, columns (posts and piers) or sheer walls.

FLOOD BOUNDARY - FLOODWAY MAP (FBFM) - 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 or FLOODING - 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 HAZARD BOUNDARY MAP (FHBM) - 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 defined, but no water surface elevation is provided.

FLOOD INSURANCE RATE MAP (FIRM) - 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 - The official report provided by the Federal Emergency Management Agency. The report contains flood profiles, as well as the Flood Boundary – Floodway Map and the water surface elevations of the base flood.

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

FLOODWAY - The same meaning as “regulatory floodway.”

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

FUNCTIONALLY DEPENDENT USE - A use which cannot perform its intended purpose unless it is located or carried out in close proximity to water, such as 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 - The highest natural elevation of the ground surface, prior to construction, next to the proposed walls of a structure.

LOWEST FLOOD - The lowest level, including the basement or cellar, of the lowest enclosed area. An unfinished or flood-resistant enclosure usable solely for parking of vehicles, building access or storage, in an area other than a basement is not considered a building’s “lowest floor”, provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this chapter.

MANUFACTURED HOME - A structure, transportable in one (1) or more sections, which is built on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities. The term also includes park trailers, travel trailers and similar transportable structures placed on a site for one hundred eighty (180) consecutive days or longer and intended to be improved property.

MEAN SEA LEVEL - For purposes of the National Flood Insurance Program, the National Geodetic Vertical Datum (NGVD) of 1929 or other datum to which base flood elevations shown on a community’s Flood Insurance Rate Map are referenced.

MOBILE HOME - The same meaning as “manufactured home.”

NATIONAL GEODETIC VERTICAL DATUM (NGVD) - As corrected in 1929, a vertical control used as a reference for establishing varying elevations within the floodplain.

NEW CONSTRUCTION - Structures for which the start of construction commenced on or after the effective date of this chapter.

ONE-HUNDRED-YEAR FLOOD - The same meaning as “base flood.”

PRINCIPALLY ABOVE GROUND - That at least fifty-one percent (51%) of the actual cash value of the structure, excluding land value, is above ground.

REGULATORY FLOODWAY – 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 § 34A-13B, of this chapter.

SAND DUNES - Naturally occurring accumulations of sand in ridges or mounds landward of the beach.

START OF CONSTRUCTION - The initiation, excluding planning and design, of any phase or a project, or physical alteration of the property, and shall include land preparation, such as clearing, grading and filling; installation of streets and/or walkways; excavation for a basement, footings, piers or foundations; or the erection of temporary forms. It also includes the placement and/or installation on the property of accessory buildings (garages, sheds), storage trailers and building materials. For manufactured homes, the “actual start” means affixing of the manufactured home to its permanent site.

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

SUBSTANTIAL IMPROVEMENT - Any repair, reconstruction or improvement of a structure, the cost of which equals or exceeds fifty percent (50%) of the market value of the structure either before the improvement or repair is started or, if the structure has been damaged and is being restored, before the damage occurred. For the purposes of this definition, “substantial improvement” is considered to commence when the first alteration of any wall, ceiling, floor or other structural part of the

building commences, whether or not that alteration affects the external dimensions of the structure. The term does not, however, include either:

- (1) Any project for improvement of a structure to comply with existing state or local building, fire, health, sanitary or safety code specifications which are solely necessary to assure safe living conditions; or
- (2) Any alteration of a structure or contributing structure listed on the National Register of Historic Places or a State Inventory of Historic Places.

VARIANCE - A grant of relief from the requirements of this chapter which permits construction or use in a manner that would otherwise be prohibited by this chapter.

§ 34A-5. Applicability.

This chapter shall apply to all areas of special flood hazard within the jurisdiction of the City of Dunkirk, County of Chautauqua.

**§ 34A-6. Basis for establishing areas of special flood hazard.
[Amended 10-3-1989 by L.L. #3-1989]**

The areas of special flood hazard have been identified by the Federal Emergency Management Agency in a scientific and engineering report entitled "Flood Insurance Study, City of Dunkirk, New York, Chautauqua County," dated August 4, 1980, with Flood Insurance Rate Maps enumerated on Map Index No. 360137 0005B dated February 4, 1981, and with accompanying Flood Boundary and Floodway Maps enumerated on Map Index No. 360137 0005B, dated February 4, 1981. The above documents are hereby adopted and declared to be a part of this chapter and are filed at the Housing, Building and Zoning Office.

§ 34A-7. Interpretation; conflict with other laws.

- A. This chapter is adopted in response to revisions to the National Flood Insurance Program effective October 1, 1986, and shall supersede all previous laws adopted for the purpose of establishing and maintaining eligibility for flood insurance.
- B. In their interpretation and application, the provisions of this chapter shall be held to be minimum requirements, adopted for the promotion of the public health, safety and welfare. Whenever the requirements of this chapter 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.

§ 34A-8. Severability.

The invalidity of any section or provision of this chapter shall not invalidate any other section or provision thereof.

§ 34A-9. Penalties for offenses.

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 chapter and any other applicable regulations. Any infraction of the provisions of this chapter 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 violated this chapter or fails to comply with any of its requirements shall, upon conviction thereof, be fined no more than Two Hundred Fifty Dollars (\$250.00) or imprisoned for not more than fifteen (15) days, or both. Each day of noncompliance shall be considered a separate offense. Nothing herein contained shall prevent the City of Dunkirk from taking such other lawful action as necessary to prevent or remedy an infraction. Any structure found not compliant with the requirements of this chapter for which the developer and/or owner has not applied for and received an approved variance under § 34A-17 and § 34A-18 will be declared noncompliant and notification sent to the Federal Emergency Management Agency.

§ 34A-10. Warning and disclaimer of liability.

The degree of flood prevention required by this chapter 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 chapter does not imply that land outside the areas of special flood hazard or uses permitted within such areas will be free from flooding or flood damages. This chapter shall not create liability on the part of the City of Dunkirk, any officer or employee thereof or the Federal Emergency Management Agency for any flood damages that result from reliance on this chapter or any administrative decision lawfully made thereunder.

§ 34A-11. Designation of local administrator.

The Housing, Building and Zoning Officers are hereby appointed local administrator to administer and implement this chapter by granting or denying development permit applications in accordance with its provisions.

§ 34A-12. Development permit.

A development permit shall be obtained before the start of construction or any other development within the area of special flood hazard as established in § 34A-6. Application for a development 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.

- A. **Application stage.** The following information is required where applicable.
- (1) Elevation in relation to mean sea level of the proposed lowest floor, including the basement or cellar, of all structures.
 - (2) Elevation in relation to mean sea level to which any nonresidential structure will be floodproofed.
 - (3) When required, a certificate from a licensed professional engineer or architect that the utility floodproofing will meet the criteria in § 34A-14C(1).
 - (4) A certificate from a licensed professional engineer or architect that the nonresidential floodproofed structure will meet the floodproofing criteria in § 34A-15.
 - (5) A description of the extent to which any watercourse will be altered or relocated as a result of proposed development.
- B. **Construction stage.** Upon placement of the lowest floor or floodproofing by whatever means, it shall be the duty of the permit holder to submit to the local administrator a certificate of the elevation of the lowest floor or floodproofed elevation in relation to mean sea level. The elevation certificate shall be prepared by or under the direct supervision of a licensed land surveyor or professional engineer and certified by the same. When floodproofing is utilized for a particular building, the floodproofing certificate shall be prepared by or under the direct supervision of a licensed professional engineer or architect and certified by the same. 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.

§ 34A-13. Duties of local administrator.

The duties of the local administrator shall include, but not be limited to:

- A. **Permit application review.** The local administrator shall:
- (1) Review all development permit applications to determine that the requirements of this chapter have been satisfied.
 - (2) Review all development permit applications to determine that all necessary permits have been obtained from those federal, state or local governmental agencies from which prior approval is required.
 - (3) Review all development permit applications to determine if the proposed development adversely affects the area of special flood hazard. For the purpose of this chapter, “adversely affects” means physical damage to adjacent properties. An engineering study may be required of the applicant for this purpose.
 - (a) If there is no adverse effect, then the permit shall be granted consistent with the provisions of this chapter.
 - (b) If there is an adverse effect, then flood damage mitigation measures shall be made a condition of the permit.
 - (4) Review all development permits for compliance with the provisions of § 34A-14E, Encroachments.
- B. **Use of other base flood and floodway data.** When base flood elevation data has not been provided in accordance with § 34A-6, Basis for establishing areas of special flood hazard, 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 § 34A-14D(4), in order to administer § 34A-15, Specific standards for flood hazard reduction, and § 34A-16, Floodways
- C. **Information to be obtained and maintained.** The local administrator shall:
- (1) Obtain and record the actual elevation, in relation to mean sea level, of the lowest floor, including the basement or

cellar, of all new or substantially improved structures and whether or not the structure contains a basement or cellar.

- (2) For all new or substantially improved floodproofed structures:
 - (a) Obtain and record the actual elevation, in relation to mean sea level, to which the structure has been floodproofed; and
 - (b) Maintain the floodproofing certifications required in §§ 34A-14 and 34A-15.
- (3) Maintain for public inspection all records pertaining to the provisions of this chapter, including variances, when granted, and certificates of compliance.

D. Alteration of watercourses. The local administrator shall:

- (1) Notify adjacent communities and the New York State Department of Environmental Conservation prior to any alteration or relocation of a watercourse and submit evidence of such notification to the Regional Director, Federal Emergency Management Agency, Region II, 26 Federal Plaza, New York, New York 10278.
- (2) Require that maintenance is provided within the altered or relocated portion of said watercourse so that flood-carrying capacity is not diminished.

E. Interpretation of FIRM boundaries.

- (1) The local administrator shall have the authority to make interpretations when there appears to be a conflict between the limits of the federally identified area of special flood hazard and actual field conditions.
- (2) Base flood elevation data established pursuant to § 34A-5 and/or § 34A-13B, when available, shall be used to accurately delineate the areas of special flood hazard.
- (3) The local administrator shall use flood information from any other authoritative source, including historical data, to establish the limits of the areas of special flood hazard when base flood elevations are not available.

F. **Stop-work orders.**

- (1) All floodplain development found ongoing without an approved permit shall be subject to the issuance of a stop-work order by the local administrator. Disregard of a stop-work order shall be subject to the penalties described in § 34A-9 of this chapter.
- (2) All floodplain development found noncompliant with the provisions of this chapter and/or the conditions of the approved permit shall be subject to the issuance of a stop-work order by the local administrator. Disregard of a stop-work order shall be subject to the penalties described in § 34A-9 of this chapter.

G. **Inspections.** 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 that the development is in compliance with the requirements of either the development permit or the approved variance.

H. **Certificate of compliance.**

- (1) It shall be unlawful to use or 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 chapter.
- (2) All other development occurring within the designated flood hazard area will have, upon completion, a certificate of compliance issued by the local administrator.
- (3) All certifications shall be based upon the inspection conducted subject to § 34A-13G and/or any certified elevations, hydraulic information, floodproofing, anchoring requirements or encroachment analysis which may have been required as a condition of the approved permit.

§ 34A-14. General standards for flood hazard reduction.

In all areas of special flood hazard, the following standards are required:

A. Anchoring.

- (1) All new construction and substantial improvements shall be anchored to prevent flotation, collapse or lateral movement of the structure.
- (2) All manufactured homes shall be installed using methods and practices which minimize flood damage. Manufactured homes must be elevated and anchored to resist flotation, collapse or lateral movement. Manufactured homes shall be elevated to or above the base flood elevation or two (2) feet above the highest adjacent grade when no base flood elevation has been determined. Methods of anchoring may include, but are not to be limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable state and local anchoring requirement for resisting wind forces.

B. Construction materials and methods.

- (1) All new construction and substantial improvements shall be constructed with materials and utility equipment resistance to flood damage.
- (2) All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damage.

C. Utilities.

- (1) Electrical, heating, ventilation, plumbing, air-conditioning equipment and other service facilities shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding. When designed for location below the base flood elevation, a professional engineer's or architect's certification is required.
- (2) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems.
- (3) New and replacement sanitary sewerage systems shall be designed to minimize or eliminate infiltration of floodwaters.

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

D. Subdivision proposals.

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

E. Encroachments.

- (1) All proposed development in riverine situations where no flood elevation data is available (unnumbered A Zones) shall be analyzed to determine the effects on the flood-carrying capacity of the area of special flood hazard set forth in § 34A-13A, Permit application review. This may require the submission of additional technical data to assist in the determination.
- (2) In all areas of special flood hazard in which base flood elevation data is available pursuant to § 34A-13B or § 34A-14D(4) and no floodway has been determined, the cumulative effects of any proposed development, when combined with all other existing and anticipated development, shall not increase the water surface elevation of the base flood more than one (1) foot at any point.
- (3) In all areas of the special flood hazard where floodway data is provided or available pursuant to § 34A-13B, the requirements of § 34A-16, Floodways, shall apply.

§ 34A-15. Specific standards for flood hazard reduction.

In all areas of special flood hazard where base flood elevation data has been provided as set forth in § 34A-6, Basis for establishing areas of special flood hazard, and § 34A-13B, Use of other base flood and floodway data, the following standards are required:

- A. **Residential construction.** New construction and substantial improvements of any resident structure shall:
- (1) Have the lowest floor, including the basement or cellar, elevated to or above the base flood elevation.
 - (2) Have fully enclosed areas below the lowest floor that are subject to flooding designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by licensed professional engineer or architect or meet or exceed the following minimum criteria:
 - (a) There shall be a minimum of two (2) openings having a total net area of not less than one (1) square inch for every square foot of enclosed area subject to flooding.
 - (b) The bottom of all such openings shall be no higher than one (1) foot above the lowest adjacent finished grade.
 - (c) Openings may be equipped with louvers, valves, screens or other coverings or devices, provided that they permit the automatic entry and exit of floodwaters.
- B. **Nonresidential construction.** New construction and substantial improvements of any commercial, industrial or other nonresidential structure, together with attendant utility and sanitary facilities, shall either have the lowest floor, including the basement or cellar, elevated to or above the base flood elevation or be floodproofed so that the structure is watertight below the base flood level 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.

- (1) If the structure is to be elevated, fully enclosed areas below the base flood elevation shall be designed to automatically (without human intervention) allow for the entry and exit of floodwaters for the purpose of equalizing hydrostatic flood forces on exterior walls. Designs for meeting this requirement must either be certified by a licensed professional engineer or a license architect or meet the following criteria.
 - (a) There shall be a minimum of two (2) openings having a total net area of not less than one (1) square inch for every square foot of enclosed area subject to flooding.
 - (b) The bottom of all such openings shall be no higher than one (1) foot above the lowest adjacent finished grade.
 - (c) Openings may be equipped with louvers, valves, screens or other coverings or devices, provided that they permit the automatic entry and exit of floodwaters.
 - (2) If the structure is to be floodproofed:
 - (a) A licensed professional engineer or architect shall develop and/or review structural design, specifications and plans for the construction and shall certify that the design and methods of construction are in accordance with accepted standards of practice to make the structure watertight with walls substantially impermeable to the passage of water, with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy; and
 - (b) A licensed professional engineer or licensed land surveyor shall certify the specific elevation, in relation to mean sea level, to which the structure is floodproofed.
 - (3) The local administrator shall maintain on record a copy of all such certificates noted in this section.
- C. **Construction standards for areas of special flood hazard without base elevations.** New construction or substantial

improvements of structures, including manufactured homes, shall have the lowest floor, including the basement, elevated to or above the base flood elevation as may be determined in § 34A-13B or two (2) feet above the highest adjacent grade where no elevation data is available.

- (1) New construction or substantial improvements of structures, including manufactured homes, shall have the lowest floor, including the basement, elevated at least two (2) feet above the highest adjacent grade next to the proposed foundation of the structure.
- (2) Fully enclosed areas below the lowest floor that are subject to flooding shall be designed to automatically (without human intervention) allow for the entry and exit of floodwaters for the purpose of equalizing hydrostatic flood forces on exterior walls. Designs for meeting this requirement must either be certified by a licensed professional engineer or a licensed architect or meet the following criteria:
 - (a) There shall be a minimum of two (2) openings having a total net area of not less than one (1) square inch for every square foot of enclosed area subject to flooding.
 - (b) The bottom of all such openings shall be no higher than one (1) foot above the lowest adjacent finished grade.
 - (c) Openings may be equipped with louvers, valves, screens or other coverings or openings, provided that they permit the automatic entry and exit of floodwaters.

§ 34A-16. Floodways.

Located within areas of special flood hazard are areas designated as floodways. (See Definitions, § 34A-4.) The floodway is an extremely hazardous area due to high-velocity floodwaters carrying debris and posing additional threats from potential erosion forces. When floodway data is available for a particular site as provided by §§ 34A-6 and 34A-13B; all encroachments, including fill, new construction, substantial improvements and other development, are prohibited within the limits of the floodway unless a technical evaluation demonstrates that such encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge.

§ 34A-17. Board of Appeals.

- A. The Zoning Board of Appeals, as established by § 79-70 of the Dunkirk City Code, shall hear and decide appeals and request for variances from the requirements of this chapter.
- B. The Zoning Board of Appeals shall hear and decide appeals when it is alleged that there is an error in any requirement, decision or determination made by the local administrator in the enforcement or administration of this chapter.
- C. Those aggrieved by the decision of the Zoning Board 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 shall consider all technical evaluations, all relevant factors, standards specified in other sections of this chapter and:
 - (1) The danger that materials may be swept onto other lands to the injury of others.
 - (2) The danger to life and property due to flooding or erosion damage.
 - (3) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner.
 - (4) The importance of the service provided by the proposed facility to the community.
 - (5) The necessity to the facility of a waterfront location, where applicable.
 - (6) The availability of alternative locations for the proposed use which are not subject to flooding or erosion damage.
 - (7) The compatibility of the proposed use with existing and anticipated development.
 - (8) The relationship of the proposed use of the Comprehensive Plan and floodplain management program of that area.

- (9) The safety of access to the property in times of flood for ordinary and emergency vehicles.
 - (10) The cost to local governments and the dangers associated with conducting search and rescue operations during periods of flooding.
 - (11) The expected heights, velocity, duration, rate of rise and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site.
 - (12) The costs of providing governmental services during and after flood conditions, including search and rescue operations, and 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 § 34A-16D and the purpose of this chapter, the Zoning Board may attach such conditions to the granting of variances as it deems necessary to further the purpose of this chapter.
- 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.

§ 34A-18. Conditions for variances.

- A. Generally, variances may be issued for new construction and substantial improvements to be erected on a lot of one-half (1/2) acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, provided that § 34A-17D(1) through (12) has been fully considered. As the lot size increases beyond the one-half (1/2) acre, the technical justification required for issuing the variance increases.
- B. Variances may be issued for the reconstruction, rehabilitation or restoration of structures and contributing structures listed on the National Register of Historic Places or the State Inventory of Historic Places, without regard to the contributing structures procedures set forth in the remainder of this section.
- 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:

- (1) The criteria of Subsection A, D, E and F of this section are met.
 - (2) The structure of other development is protected by methods that minimize flood damage 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 level during the base flood discharge would result.
- E. Variances shall only be issued upon a determination that variance is the minimum necessary, considering the flood hazard, to afford relief.
- F. Variances shall only be issued upon receiving written justification of:
- (1) A showing of good and sufficient cause;
 - (2) A determination that failure to grant the variance would result in exceptional hardship to the applicant; and
 - (3) A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety or extraordinary public expense; create nuisances; cause fraud on or victimization of the public; or conflict with existing local laws or ordinances.