

**TOWN / VILLAGE / CITY OF \_\_\_\_\_**  
**ZONING BOARD OF APPEALS**  
**FLOODPLAIN VARIANCE FINDINGS & DECISION**

**RESOLUTION # ZBA - \_\_\_\_\_**

**DATE: \_\_\_\_\_**

**FLOODPLAIN DEVELOPMENT PERMIT APPLICATION # \_\_\_\_\_**

**APPLICANT: \_\_\_\_\_**

**DESCRIPTION OF ACTION:**

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**REQUIREMENT(S) FOR WHICH VARIANCE IS REQUESTED:**

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**RELIEF SOUGHT:**

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**NOTICE OF PUBLIC HEARING PUBLISHED: \_\_\_\_\_**

**CIRCUMSTANCES FOR THE PROPOSED VARIANCE:**

- 1) Is the proposed variance for new construction or a substantial improvement 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? (As the lot size increases beyond one-half acre, the technical justification required for issuing the variance increases.) \_\_\_\_\_
  
- 2) Is the proposed variance for repair or rehabilitation of a historic structure (as defined in the Local Law for Flood Damage Prevention)? \_\_\_\_\_  
If so, will the work preclude the structure’s continued designation as historic? \_\_\_\_\_  
Is the proposed variance the minimum necessary to preserve the historic character and design of the structure? \_\_\_\_\_
  
- 3) Is the proposed variance for development necessary for the conduct of a “functionally dependent use” (as defined in the Local Law for Flood Damage Prevention), which cannot perform its intended purpose unless it is located or carried out in close proximity to water?  
\_\_\_\_\_  
If so, is the structure or other development protected by methods that minimize flood damages during the base flood and create no additional threat to public safety? \_\_\_\_\_
  
- 4) Is any part of the proposed variance within a regulatory floodway? \_\_\_\_\_  
If so, would it result in an increase in flood levels during the base flood? (The variance process cannot continue if any increase in flood elevations would result.) \_\_\_\_\_

**FACTORS CONSIDERED:**

In making its determination, the Zoning Board of Appeals (ZBA) took into consideration the characteristics pertaining to the property that might give rise to exceptional hardship. The ZBA weighed the applicant’s hardship against the purpose of the Local Law for Flood Damage Prevention, which is: “to promote the public health, safety, and general welfare, and to minimize public and private losses due to flood conditions in specific areas by provisions designed to:

- (1) 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;
- (2) require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;
- (3) control the alteration of natural floodplains, stream channels, and natural protective barriers which are involved in the accommodation of flood waters;
- (4) control filling, grading, dredging and other development which may increase erosion or flood damages;
- (5) regulate the construction of flood barriers which will unnaturally divert flood waters or which may increase flood hazards to other lands, and;
- (6) qualify for and maintain participation in the National Flood Insurance Program.”

The Board also considered the following factors in making its determination:

**1) The danger that materials may be swept onto other lands to the injury of others.**

ZBA FINDINGS: \_\_\_\_\_

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**2) The danger to life and property due to flooding or erosion damage.**

ZBA FINDINGS: \_\_\_\_\_

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**3) The susceptibility of the proposed facility and its contents to flood damage.**

ZBA FINDINGS: \_\_\_\_\_

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**4) The effect of flood damage to the facility on the individual owner.**

ZBA FINDINGS: \_\_\_\_\_

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**5) The importance of the services provided by the proposed facility to the community.**

ZBA FINDINGS: \_\_\_\_\_

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**6) The necessity to the facility of a waterfront or floodplain location.**

ZBA FINDINGS: \_\_\_\_\_

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**7) The availability of alternative locations for the proposed use that are not subject to flooding or erosion damage.**

ZBA FINDINGS: \_\_\_\_\_

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**8) The compatibility of the proposed use with existing and anticipated development.**

ZBA FINDINGS: \_\_\_\_\_

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**9) The relationship of the proposed use to the comprehensive plan and floodplain management program of that area.**

ZBA FINDINGS: \_\_\_\_\_

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**10) The safety of access to the property in times of flood for ordinary and emergency vehicles.**

ZBA FINDINGS: \_\_\_\_\_

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**11) The costs to local governments and the dangers associated with conducting search and rescue operations during periods of flooding.**

ZBA FINDINGS: \_\_\_\_\_

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**12) 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.**

ZBA FINDINGS: \_\_\_\_\_

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**13) 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.**

ZBA FINDINGS: \_\_\_\_\_

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**REQUIRED CONDITIONS:**

**1) The variance is the minimum necessary, considering the flood hazard, to afford relief.**

ZBA FINDINGS: \_\_\_\_\_

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Required condition met?    \_\_\_\_\_ Yes    \_\_\_\_\_ No

**2) The applicant has shown good and sufficient cause.**

ZBA FINDINGS: \_\_\_\_\_

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Required condition met?      \_\_\_\_\_ Yes      \_\_\_\_\_ No

**3) Failure to grant the variance would result in exceptional hardship to the applicant.**

[FEMA guidance states, “The applicant has the burden of proving unnecessary hardship. Reasons for granting the variance must be substantial; the proof must be compelling. The claimed hardship must be exceptional, unusual, and peculiar to the property involved. Financial hardship, inconvenience, aesthetic considerations, physical handicaps, personal preferences or the disapproval of one’s neighbors do not qualify as exceptional hardships.” (FEMA 480)]

ZBA FINDINGS: \_\_\_\_\_

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Required condition met?      \_\_\_\_\_ Yes      \_\_\_\_\_ No

**4) Granting of a variance would not result in increased flood heights.**

ZBA FINDINGS: \_\_\_\_\_

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Required condition met?      \_\_\_\_\_ Yes      \_\_\_\_\_ No

**5) Granting of a variance would not result in additional threats to public safety.**

ZBA FINDINGS: \_\_\_\_\_

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Required condition met?      \_\_\_\_\_ Yes      \_\_\_\_\_ No

**6) Granting of a variance would not result in extraordinary public expense.**

ZBA FINDINGS: \_\_\_\_\_

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Required condition met?    \_\_\_\_\_ Yes    \_\_\_\_\_ No

**7) Granting of a variance would not create nuisances.**

ZBA FINDINGS: \_\_\_\_\_

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Required condition met?    \_\_\_\_\_ Yes    \_\_\_\_\_ No

**8) Granting of a variance would not cause fraud on or victimization of the public.**

ZBA FINDINGS: \_\_\_\_\_

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Required condition met?    \_\_\_\_\_ Yes    \_\_\_\_\_ No

**9) Granting of a variance would not conflict with existing local laws or ordinances.**

ZBA FINDINGS: \_\_\_\_\_

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Required condition met?    \_\_\_\_\_ Yes    \_\_\_\_\_ No

**FINDINGS ON BALANCE:** \_\_\_\_\_

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**DETERMINATION OF ZBA BASED ON THE ABOVE FACTORS:**

Upon consideration of the above factors, the ZBA finds:

\_\_\_\_\_ That the applicant has failed to meet conditions for granting a variance.

\_\_\_\_\_ That (1) the applicant has shown good and sufficient cause, (2) failure to grant the variance would result in exceptional hardship to the applicant, and (3) granting of a variance would 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. In addition, the ZBA has determined that the variance is the minimum necessary, considering the flood hazard, to afford relief. In finding exceptional hardship, the ZBA grants a variance from the requirements of the Local Law for Flood Damage Prevention.

**CONDITIONS OF APPROVAL:**

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**VARIANCE APPROVED/DENIED BY VOTE OF:** \_\_\_\_\_ **FAVOR**  
\_\_\_\_\_ **OPPOSED**

**MEMBERS PRESENT:** \_\_\_\_\_  
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**Chair, Zoning Board of Appeals      Date**