

Mr. Parla offered the following Resolution and moved on its adoption:

**RESOLUTION  
BOROUGH OF HIGHLANDS PLANNING BOARD**

**WHEREAS**, the Mayor and Council of the Borough of Highlands authorized the Planning Board by resolution to undertake a review of proposed Borough Ordinance O—09-30, which Ordinance will amend Ordinance O-99-11, which is set forth in the Borough Zoning Ordinance at Chapter 21-109 et seq.; and

**WHEREAS**, the Municipal Land Use Act, NJSA 40:55D-26 & 64, requires that the Planning Board prepare and transmit a report back to the Governing Body; and

**WHEREAS**, said statute does further require that the report of the Planning Board shall include an identification of any provision or provisions set forth in the proposed ordinance amendment which is or are inconsistent with the Borough Master Plan and contain recommendations concerning those inconsistencies and any other matters as the Board deems appropriate; and

**WHEREAS**, the Board conducted a review of the proposed amendment on October 8 and November 12, 2009; and

**WHEREAS**, the Board received comments from Board members, the Board Engineer and Attorney and various members of the public.

**NOW, THEREFORE BE IT RESOLVED**, by the Planning Board of the Borough of Highlands that it hereby finds that the proposed ordinance is consistent with the provisions of the Borough Master Plan and the Board respectfully recommends that prior to the adoption of the above mentioned Ordinance, the Mayor and Council review the recommendations of the Board which are annexed hereto and made a part hereof; and

**BE IT FURTHER RESOLVED** that the Board hereby directs its Secretary to transmit this resolution and the recommendations annexed hereto to the Clerk of the Borough of Highlands pursuant to the Statute first mentioned above forthwith for consideration by the Mayor and Council of the Borough of Highlands.

Seconded by Mr. Mullen and adopted on the following roll call vote:

**ROLL CALL:**

**AYES:** Mr. Manrodt, Mr. Mullen, Mr. O’Neil, Mr. Schoellner, Mayor Little,  
Mr. Francy, Ms. Peterson, Mr. Roberts

**NAYES:** None

**ABSTAIN:** None

**DATE:** November 12, 2009

\_\_\_\_\_  
**CAROLYN CUMMINS, Board Secretary**

I certify this to be a true copy of a Resolution adopted by the Borough of Highlands Planning Board on November 12, 2009.

---

Carolyn Cummins, Board Secretary

Good morning Jack and Carolyn,

I am reviewing the packet that Carolyn sent out regarding Ordinance O-09-30 Flood Damage Protection, and I have some issues that I think we need to discuss and recommend for consideration at the next Planning Board meeting.

1. The draft ordinance seems to follow the NJDEP Model Flood Damage Prevention Ordinance, available at this website: <http://www.nj.gov/dep/floodcontrol/modelord.htm> .

It seems to me that the NJDEP model ordinance was drafted by the Department on or about August 28, 2006, which pre-dates the enactment of NJDEP's Flood Hazard Area Control Act Rules enacted on November 5, 2007. These dates are significant because the Department enacted new and much stricter flood hazard area rules on November 5, 2007 pertaining to constructing and reconstructing buildings and structures in a flood hazard area. I think the regulations at NJAC 7:13 govern over many of the items contained in the draft Ordinance and that the draft Ordinance needs significant modifications to be consistent with the Departments rules (see attached NJAC 7:13 for more specific information).

**THERE ARE IN FACT SEVERAL INSTANCES IN THE DRAFT ORDINANCE O-09-30 PERTAINING TO CONSTRUCTION AND RECONSTRUCTION OF IMPROVEMENTS THAT ARE APPARENTLY OUT-DATED AND NO LONGER ALLOWED BY NJDEP FLOOD HAZARD AREA CONTROL ACT REGULATIONS**

- specifically in Ordinance Section 21-125.1 Residential Construction; Section 21-125.2 Nonresidential Construction; and in Section 21-125.3 manufactured homes. I think it is kind of funny that many of the coastal towns have recently adopted similar flood control ordinances but few have picked up on this fact. Their ordinances may not actually comply with NJ Administrative Code requirements and they may not be providing the protections to health, safety, and general welfare as strongly as they had hoped.

I think it would be much better for our Ordinance to incorporate the language of the NJDEP's Flood Hazard Area Control Act Rules pertaining to buildings into our proposed Sections 21-125.1, 21-125.2, and 21-125.3, especially: A) Requirements for a Structure at NJAC 7:13-11.4 (pg 111 of the attached document); B) Requirements for a Building at NJAC 7:13-11.5 (pg 111 of the attached document); and C) Requirements for Excavation, Fill, and Grading Activities at NJAC 7:13-11.3 (pg 111 of the attached document). These sections of the NJ Administrative Code provide strict guidelines for constructing and reconstructing buildings, setting minimum first floor grades, and for enclosing or using the space beneath the flood hazard area base flood elevation, including much more detailed requirements for flood vents and openings shown in proposed Ordinance Section 21-124.5. Please suggest that Ordinance Sections 21-125.1, 21-125.2, and 21-125.3 be re-written to incorporate the requirements of the NJ Administrative Code.

2. Ordinance Section 21-120 provides requirements for a Development Permit. I think that this section should include paragraph [5] **requiring that the Base Flood Elevation**

**in relation to mean sea level be provided on the plans.** Please suggest that this paragraph be added to our Ordinance.

3. Ordinance Section 21-122.1 Permit Review should incorporate text in paragraph [2] to read: "[2] Review of all development permits to determine that all necessary permits have been obtained from those Federal, State, or local governmental agencies, **including NJ Department of Environmental Protection Flood Hazard Area permits**, from which prior approval is required **before issuing a development permit from the Borough.**"

Please suggest that this text be added to our Ordinance.

4. Ordinance Section 21-122.1 Permit Review should incorporate text at the end of paragraph [5] to read: "...accordance with Section 21-125.6(4) **and NJ Administrative Code Requirements at NJAC 7:13-11.4 and 11.5.**" Please suggest that this text be added to our Ordinance.

5. The draft ordinance provides for "Conditions for Variances" at Section 21-123.2 that appear to me to be in direct conflict with FEMA Coastal Construction Guidelines and NJDEP Flood Hazard Area Control Act Rules. Our Planning Board was told by the local FEMA representative that our Borough could be de-listed or suspended from the Flood Insurance Program for granting too many variances and that this could have a detrimental impact on mortgages and loans that require homeowners to have flood insurance as well as a detrimental impact on the health, safety, and general welfare of our citizens.

The NJDEP's Flood Hazard Area Control Act Rules provide for strict compliance and the Department makes it seem next to impossible for them to grant hardship variances with regard to their Flood Hazard Area permit review process. I think our proposed Ordinance Section 21-123.2 [1] and [2] makes it seem that variances are easy to get, when the truth should be just the opposite. Please suggest that these paragraphs get reworded and made stricter to be more in line with NJAC 7:13-9.8 (pg 81 of the attached document).

At a minimum one of our requirements for issuing a variance according to Ordinance Section 21-123[5] should be: **(iv) applicant obtains a Flood Hazard Area Permit from the NJ Department of Environmental Protection pursuant to NJAC 7:13.**

Please suggest that we add this text to the Ordinance too.

6. "Conditions for Variances" at **Section 21-123.2 Paragraph [6] should be stricken** all together from the proposed Ordinance. I think the Borough might open itself up to liability and that applicants will be easily confused if we grant written permission to allow a structure to be built with its lowest floor elevation below the base flood elevation when the NJDEP clearly restricts and regulates against such a thing. In my opinion, the Borough providing such a written notice allowing a structure to be built with its lowest floor elevation below the base flood elevation is contrary to protecting the health, safety, and general welfare of the public. Please suggest that we strike this paragraph all together from the proposed Ordinance.

7. Ordinance Section 21-124.2 Construction Materials and Methods should incorporate a paragraph [3] to read: "**All new construction and reconstruction shall be consistent with New Jersey Department of Environmental Protection rules and FEMA Coastal Construction guidelines.** Please suggest that we add this text to the Ordinance.

8. Ordinance Section 21-124.4 Subdivision Approvals has a funny quirk in paragraph [4] that reads: "base flood elevation data shall be provided for all subdivision proposals and other proposed development which contain *at least fifty (50) lots or five (5) acres (whichever is less)*. I think there are no 50 lot subdivisions or 5 acre tracts in Highlands Borough and think this should be struck from the Ordinance. I think it would be better for us to indicate that **base flood elevation data shall be provided for all subdivision proposals and other proposed development regardless of project or tract size.** Base flood elevation data is something that NJDEP review requires anyway during the course of their review for projects in flood hazard areas. Please suggest that we revise the text to strike out reference to project or lot size.

9. Ordinance Section 21-124.5 Enclosure Openings is not entirely consistent with NJDEP Flood Hazard Area rules at NJAC 7:13-5(o) and (p). The Administrative Code also requires: a) inverts of at least half of the flood vents to be no more than 12-inches above the floor of the building; b) that flood vents shall not be blocked at any time; and c) the floor elevation of the enclosed area is at or above the adjoining exterior grade along at least one exterior wall. I think our Ordinance Section 21-124.5 should contain similar wording. Please suggest that we revise the text of our Ordinance to include these suggestions.

10. I think Ordinance Section 21-125.6 Construction Methods pertains to new construction or reconstruction in a Coastal High Hazard area as outlined at Section 21-125.4, although Section 21-125.6 makes no mention of this. I believe this because Section 21-125.6 talks about break-away walls which is a construction method for enclosing space beneath a structure in a "V-zone" area where the main structure needs to be elevated on pilings. Please suggest wording for Ordinance Section 21-125.6 tying it to Section 21-125.4 for clarity.

11. Ordinance Section 21-111 Findings of Fact Paragraph [2] confuses me a bit. The wording is taken directly from the NJDEP model ordinance and reads: "[2] These flood losses are caused by the cumulative effect of obstructions in areas of special flood hazard which increase flood heights and velocities, and when inadequately anchored, causes damage in other areas."

I have no idea how "flood losses" can be inadequately anchored....perhaps it should read: "...and when structures or obstructions are in adequately anchored..."

ANDREW R. STOCKTON  
Planning Board Chairman

PS. Carolyn, When you print this for our Planning Board packets, please print pages 81, 111-116 of the attached NJDEP Flood Hazard Area rules. These are the pages that provide information pertaining to NJDEP hardship waiver, requirements for a structure, and requirements for a building that I reference in this email. Thanks.

HIGHLANDS.NJ.US

