

## Article XI. Permit and Site Plan Procedures; Enforcement and Penalties

### §11-1 Administrative standards.

Whenever in the course of the administration and enforcement of this chapter it is necessary or desirable to make any administrative decision, then, unless other standards are in this chapter provided, the decision shall be made so that the result will not be contrary to the spirit and purpose of this chapter or injurious to the surrounding neighborhood.

### §11-2 Flood development permits.

[Amended 2-5-2008; 6-19-2018; 4-29-2019]

#### A. Statutory authorization and purpose.

1. Findings. The City Council of the City of Lackawanna finds that the potential and/or actual damages from flooding and erosion may be a problem to the residents of the City of Lackawanna 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 section is adopted.
2. Statement of purpose. It is the purpose of this section 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, 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; and
- f. Qualify for and maintain participation in the National Flood Insurance Program.

3. Objectives. The objectives of this section 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, 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; and
- h. To ensure that those who occupy the areas of special flood hazard assume responsibility for their actions.

B. Definitions. Unless specifically defined below, words or phrases used in this section shall be interpreted so as to give them the meaning they have in common usage and to give this section its most reasonable application.

**100-YEAR FLOOD**

Has the same meaning as "base flood."

**ACCESSORY STRUCTURE**

A structure used solely for parking (two-car detached garages or smaller) or limited storage, represents a minimal investment of

not more than 10% of the value of the primary structure, and may not be used for human habitation.

#### APPEAL

A request for a review of the local administrator's interpretation of any provision of this section or a request for a variance.

#### AREA OF SHALLOW FLOODING

A designated AO, AH or VO Zone on a community's FIRM with a one-percent-or-greater annual chance of flooding to an average annual depth of one foot 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

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 section, the term "special flood hazard area (SFHA)" is synonymous in meaning with the phrase "area of special flood hazard."

#### 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

See "structure."

#### CELLAR

Has the same meaning as "basement."

## COASTAL A ZONE

Area within a SFHA, landward of a V1-V30, VE, or V Zone or landward of an open coast without mapped coastal high hazard areas. In a Coastal A Zone, the principal source of flood must be astronomical tides, storm surges, seiches or tsunamis, not riverine flooding. During the base flood conditions, the potential for breaking wave height shall be greater than or equal to 1 1/2 feet (457 mm). The inland limit of Coastal A Zone is: a) the limit of moderate wave action if delineated on a FIRM; or b) designated by the authority having jurisdiction.

## COASTAL HIGH HAZARD AREA

An area of special flood hazard extending from offshore to the inland limit of a primary frontal dune along an open coast and any other area subject to high velocity wave action from storms or seismic sources. The area is designated on a FIRM as Zone V1-V30, VE, VO or V.

## CRAWL SPACE

An enclosed area beneath the lowest elevated floor, 18 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

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, 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.

## 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 or storage of equipment or materials.

#### ELEVATED BUILDING

A non-basement building:

1. 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 structural 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
2. 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 floodwaters. 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

The federal agency that administers the National Flood Insurance Program.

#### FLOOD BOUNDARY AND 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 ELEVATION STUDY

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)

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 flood elevations are 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

See "flood elevation study."

#### FLOOD or FLOODING

1. A general and temporary condition of partial or complete inundation of normally dry land areas from:
  - a. The overflow of inland or tidal waters;
  - b. The unusual and rapid accumulation or runoff of surface waters from any source.
2. "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 Subsection (1)(a) above.

#### FLOODPLAIN or FLOOD-PRONE AREA

Any land area susceptible to being inundated by water from any source (see definition of "flooding").

#### FLOODPROOFING

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

#### FLOODWAY

Has the same meaning as "regulatory floodway."

#### 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 a docking or port facility necessary for the loading and unloading of cargo or passengers, shipbuilding, and ship repair facilities.

The term does not include long-term storage, manufacturing, 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.

#### HISTORIC STRUCTURE

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:
  - a. By an approved state program as determined by the Secretary of the Interior; or
  - b. Directly by the Secretary of the Interior in states without approved programs.

#### LIMIT OF MODERATE WAVE ACTION (LiMWA)

Line shown on FIRMs to indicate the inland limit of the 1 1/2 foot (457 mm) breaking wave height during the base flood.

#### LOCAL ADMINISTRATOR

The person appointed by the community to administer and implement this section by granting or denying development permits in accordance with its provisions. This person is often the Building Inspector, Code Enforcement Officer, or employee of an engineering department.

#### LOWEST FLOOR

Lowest floor of the lowest enclosed area (including basement or cellar). An unfinished or flood-resistant enclosure, usable solely for parking of vehicles, building access, or storage in an area other than a basement area 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 section.

#### MANUFACTURED HOME

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

A parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

#### MEAN SEA LEVEL

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 FIRM are referenced.

#### MOBILE HOME

Has the same meaning as "manufactured home."

#### NEW CONSTRUCTION

Structures for which the start of construction commenced on or after the effective date of a floodplain management regulation adopted by the community and includes any subsequent improvements to such structure.

#### PRIMARY FRONTAL DUNE

A continuous or nearly continuous mound or ridge of sand with relatively steep seaward and landward slopes immediately landward and adjacent to the beach and subject to erosion and overtopping from high tides and waves during major coastal storms. The inland limit of the primary frontal dune occurs at the point where there is a distinct change from a relatively steep slope to a relatively mild slope.

#### PRINCIPALLY ABOVEGROUND

At least 51% of the actual cash value of the structure, excluding land value, is aboveground.

#### RECREATIONAL VEHICLE

A vehicle which is:

1. Built on a single chassis;
2. Four hundred square feet or less when measured at the largest horizontal projections;
3. Designed to be self-propelled or permanently towable by a light-duty truck; 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

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 Subsection D(4)(b) of this section.

#### SAND DUNES

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

#### START OF CONSTRUCTION

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.

#### STRUCTURE

A walled and roofed building, including a gas or liquid storage tank, that is principally aboveground, as well as a manufactured home.

#### SUBSTANTIAL DAMAGE

Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal or exceed 50% of the market value of the structure before the damage occurred.

#### SUBSTANTIAL IMPROVEMENT

Any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50% of the market value of the structure before the start of construction of the 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 local code enforcement official and which are the minimum necessary to assure safe living conditions; or
2. Any alteration of an historic structure provided that the alteration will not preclude the structure's continued designation as an historic structure.

#### VARIANCE

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

#### VIOLATION

The failure of a structure or other development to be fully compliant with the community's floodplain management regulations.

#### C. General provisions.

1. Lands to which this section applies. This section shall apply to all areas of special flood hazard within the jurisdiction of the

City of Lackawanna.

2. Basis for establishing the areas of special flood hazard. [Amended 5-18-2021]
  - a. The areas of special flood hazard are identified and defined on the following documents prepared by the Federal Emergency Management Agency:
    - i. Flood insurance rate maps:
      - a) 36029C0333H, 36029C0337H, 36029C0341H whose effective dates are June 7, 2019;
      - b) 36029C0309J, 36029C0328J, 36029C0329J, 36029C0336J whose effective dates are June 16, 2021, and any subsequent revisions to these map parcels that do not affect areas under our community's jurisdiction.
    - ii. A scientific and engineering report entitled "Flood Insurance Study, Erie County, New York (All Jurisdictions)," dated June 16, 2021.
      - a) The above documents are hereby adopted and declared to be a part of this section. The Flood Insurance Study and/or maps are on file at: Office of Code Enforcement, City Hall, City of Lackawanna.
3. Interpretation and conflict with other laws.
  - a. This section 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 section shall be held to be minimum requirements, adopted for the promotion of the public health, safety, and welfare. Whenever the requirements of this section 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.
4. Severability. The invalidity of any section or provision of this section shall not invalidate any other section or provision thereof.
5. Penalties for noncompliance. 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 section and any other applicable regulations. Any infraction of the provisions of this section 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 section or fails to comply with any of its requirements shall, upon conviction thereof, be fined no more than \$250 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 City of Lackawanna from taking such other lawful action as necessary to prevent or remedy an infraction. Any structure found not compliant with the requirements of this section for which the developer and/or owner has not applied for and received an approved variance under Subsection F will be declared noncompliant and notification sent to the Federal Emergency Management Agency.

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

D. Administration.

1. Designation of the local administrator. The Code Enforcement Officer is hereby appointed local administrator to administer and implement this section by granting or denying floodplain development permits in accordance with its provisions.
2. The floodplain development permit.
  - a. Purpose. 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 Subsection C(2), 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.
  - b. Fees. All applications for a floodplain development permit shall be accompanied by an application fee of \$25. In addition, the applicant shall be responsible for reimbursing the City of Lackawanna for any additional costs necessary for review, inspection and approval of this project. The local administrator may require a deposit of no more than

\$500 to cover these additional costs.

3. Application for a permit. The applicant shall provide the following information as appropriate. Additional information may be required on the permit application form.
  - a. The proposed elevation, in relation to mean sea level, of the top 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.
  - b. The proposed elevation, in relation to mean sea level, of the bottom of the lowest structural member of the lowest floor (excluding pilings and columns) of any new or substantially improved structure to be located in Zones V1-V30 or VE, or Zone V 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.
  - c. The proposed elevation, in relation to mean sea level, to which any new or substantially improved nonresidential 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.
  - d. A certificate from a licensed professional engineer or architect that any utility floodproofing will meet the criteria in Section 5.2-3, UTILITIES.
  - e. A certificate from a licensed professional engineer or architect that any nonresidential floodproofed structure will meet the floodproofing criteria in Subsection E(5), Nonresidential structures.
  - f. 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 Subsection C(2), 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.
  - g. 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.
  - h. 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 five acres.

- i. In Zones V1-V30 and VE, and also Zone V if base flood elevation are available, designs and specifications, certified by a licensed professional engineer or architect, for any breakaway walls in a proposed structure with design strengths in excess of 20 pounds per square foot.
  - j. In Zones V1-V30 and VE, and also Zone V if base flood elevation are available, for all new and substantial improvements to structures, floodplain development permit applications shall be accompanied by design plans and specifications, prepared in sufficient detail to enable independent review of the foundation support and connection components. Said plans and specifications shall be developed or reviewed by a licensed professional engineer or architect, and shall be accompanied by a statement, bearing the signature of the architect or engineer, certifying that the design and methods of construction to be used are in accordance with accepted standards of practice and with all applicable provisions of this section.
4. Duties and responsibilities of the local administrator. Duties of the local administrator shall include, but not be limited to, the following:
- a. Permit application review. The local administrator shall conduct the following permit application review before issuing a floodplain development permit:
    - i. Review all applications for completeness, particularly with the requirements of Subsection D(3), Application for a permit, and for compliance with the provisions and standards of this section.
    - ii. 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 Subsection E, Construction standards, and, in particular, Subsection E(1)(b), Subdivision proposals.
    - iii. 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 Subsection E, Construction standards, no permit shall be issued. The applicant may revise the application to include measures that mitigate or eliminate the adverse effects and resubmit the application.
    - iv. Determine that all necessary permits have been received from those governmental agencies from which approval is required by state or federal law.
  - b. Use of other flood data.

- i. 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 Subsection D(3)(h), as criteria for requiring that new construction, substantial improvements or other proposed development meet the requirements of this section.
    - ii. 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 section.
  - c. Alteration of watercourses.
    - i. Notification to adjacent municipalities that may be affected and the New York State Department of Environmental Conservation prior to permitting any alteration or relocation of a watercourse and submit evidence of such notification to the Regional Administrator, Region II, Federal Emergency Management Agency.
    - ii. 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.
  - d. Construction stage.
    - i. In Zones A1-A30, AE, AH, and 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).
    - ii. In Zones V1-V30, VE, and V if base flood elevation data are available, upon placement of the lowest floor of a new or substantially improved structure, the permit holder shall submit to the local administrator a certificate of elevation, in relation to mean sea level, of the bottom of the lowest structural member of the lowest floor (excluding pilings and columns). 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. An elevation certificate must also be submitted for a recreational vehicle if it remains on a site 180 consecutive days or longer (unless it is fully licensed and ready for highway use).

- iii. 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.
- e. 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, if requested, that the development is in compliance with the requirements of the floodplain development permit and/or any variance provisions.
- f. Stop-work orders.
  - i. The local administrator shall issue, or cause to be issued, a stop-work order for any floodplain development found ongoing without a development permit. Disregard of a stop-work order shall subject the violator to the penalties described in Subsection C(5) of this section.
  - ii. The local administrator shall issue, or cause to be issued, a stop-work order for any floodplain development found noncompliant with the provisions of this section and/or the conditions of the development permit. Disregard of a stop-work order shall subject the violator to the penalties described in Subsection C(5) of this section.
- g. Certificate of compliance.
  - i. In areas of special flood hazard, as determined by documents enumerated in Subsection C(2), 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 section.
  - ii. A certificate of compliance shall be issued by the local administrator upon satisfactory completion of all development in areas of special flood hazard.
  - iii. Issuance of the certificate shall be based upon the inspections conducted as prescribed in Subsection D(4)(e), 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.
- h. Information to be retained. The local administrator shall retain and make available for inspection copies of the following:

- i. Floodplain development permits and certificates of compliance;
- ii. Certifications of as-built lowest floor elevations of structures required pursuant to Subsection D(4)(d)[1] and [2], and whether the structures contain a basement;
- iii. Floodproofing certificates required pursuant to Subsection D(4)(d)[1], and whether the structures contain a basement;
- iv. Variances issued pursuant to Subsection F, Variance procedures; and
- v. Notices required under Subsection D(4)(c), Alteration of watercourses.
- vi. Base flood elevations developed pursuant to Subsection D(3)(g) and supporting technical analysis.

E. Construction standards.

1. General standards. 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 Subsection C(2).
  - a. Coastal high hazard areas and Coastal A Zones. The following requirements apply within Zones V1-V30, VE and V:
    - i. All new construction, including manufactured homes and recreational vehicles on site 180 days or longer and not fully licensed for highway use, shall be located landward of the reach of high tide.
    - ii. The use of fill for structural support of buildings, manufactured homes or recreational vehicles on site 180 days or longer is prohibited.
    - iii. Man-made alteration of sand dunes which would increase potential flood damage is prohibited.
  - b. Subdivision and development 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):
    - i. Proposals shall be consistent with the need to minimize flood damage.
    - ii. Public utilities and facilities such as sewer, gas, electrical and water systems shall be located and constructed to minimize flood damage.
    - iii. Adequate drainage shall be provided to reduce exposure to flood damage.
    - iv. Proposed development shall not result in physical damage to any other property (e.g., stream bank erosion or increased flood velocities). If requested by the local administrator, the applicant shall provide a technical analysis, by a licensed professional engineer, demonstrating that this condition has been met.
    - v. Proposed development shall be designed, located, and constructed so as to offer the minimum resistance to the flow of water and shall be designed to have a minimum effect upon the height of floodwater.
    - vi. Any equipment or materials located in a special flood hazard area shall be elevated, anchored, and floodproofed as necessary to prevent flotation, flood damage, and the release of hazardous substances.

- vii. No alteration or relocation of a watercourse shall be permitted unless:
  - a) A technical evaluation by a licensed professional engineer demonstrates that the altered or relocated segment will provide conveyance equal to or greater than that of the original stream segment and will not result in physical damage to any other property;
  - b) If warranted, a conditional revision of the Flood Insurance Rate Map is obtained from the Federal Emergency Management Agency, with the applicant providing the necessary data, analyses, and mapping and reimbursing the City of Lackawanna for all fees and other costs in relation to the application; and
  - c) The applicant provides assurance that maintenance will be provided so that the flood-carrying capacity of the altered or relocated portion of the watercourse will not be diminished.
- c. Encroachments.
  - i. 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:
    - a) 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
    - b) The City of Lackawanna 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 City of Lackawanna for all fees and other costs in relation to the application. The applicant must also provide all data, analyses and mapping and reimburse the City of Lackawanna for all costs related to the final map revision.
  - ii. On streams with a regulatory floodway, as shown on the Flood Boundary and Floodway Map or the Flood Insurance Rate Map adopted in Subsection C(2), no new construction, substantial improvements or other development in the floodway (including fill) shall be permitted unless:
    - a) A technical evaluation by a licensed professional engineer demonstrates through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that such an encroachment shall not result in any increase in flood levels during occurrence of the base flood; or
    - b) The City of Lackawanna 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 City of Lackawanna for all fees and other costs in relation to the application. The applicant must also provide all data, analyses and mapping and reimburse the City of Lackawanna for all costs related to the final map revisions.

- iii. In Zones A1-A30, AE and AH, and also Zone A if base flood elevation data are available, if any development is found to increase or decrease base flood elevations, the City of Lackawanna shall as soon as practicable, but not later than six months after the date such information becomes available, notify FEMA and the New York State Department of Environmental Conservation of the changes by submitting technical or scientific data in accordance with standard engineering practice.
  - iv. 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 excavations shall be construed 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.
2. Standards for all structures. 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 Subsection C(2).
- 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.
  - b. Construction materials and methods.
    - i. New construction and substantial improvements to structures shall be constructed with materials and utility equipment resistant to flood damage.
    - ii. New construction and substantial improvements to structures shall be constructed using methods and practices that minimize flood damage.
  - iii. Enclosed areas below lowest floor.
    - a) For enclosed areas below the lowest floor of a structure within Zones A1-A30, AE, AO or A, 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 floodwaters. Designs for meeting this requirement must either be certified by a licensed professional engineer or architect or meet or exceed the following minimum criteria:
      - (1) A minimum of two openings of each enclosed area having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding;
      - (2) The bottom of all such openings no higher than one foot above grade; and
      - (3) Openings not less than three inches in any direction.

- b) 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 subgrade on all sides are considered basements and are not permitted.
3. Within Zones V1-V30 and VE, and also within Zone V if base flood elevation are available, new construction and substantial improvements shall have the space below the lowest floor either free from obstruction or constructed with non-supporting breakaway walls, open wood lattice-work or insect screening intended to collapse under wind and water loads without causing collapse, displacement, or other structural damage to the elevated portion of the building or supporting foundation system. The enclosed space below the lowest floor shall be used only for parking vehicles, building access or storage. Use of this space for human habitation is expressly prohibited. The construction of stairs, stairwells and elevator shafts are subject to the design requirements for breakaway walls.
- a. Utilities.
    - i. New and replacement electrical equipment, heating, ventilating, air conditioning, plumbing connections, and other service equipment shall be located at least two feet 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 or designed to prevent water from entering and accumulating within the components 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; [Amended 6-29-2021]
    - ii. New and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the system;
    - iii. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters. 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
    - iv. On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.
  - b. Storage tanks.
    - i. [Underground tanks shall be anchored to prevent flotation, collapse and lateral movement during conditions of the base flood.
    - ii. Aboveground tanks shall be:
      - a) Anchored to prevent flotation, collapse or lateral movement during conditions of the base flood; or

- b) Installed at or above the base flood elevation as shown on the Flood Insurance Rate Map enumerated in Subsection C(2) plus two feet.
  - c. Residential structures (except coastal high hazard areas).
    - i. 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 Subsections E(1)(b), Subdivision proposals, and E(1)(c), Encroachments, and Subsection E(2), Standards for all structures.
- 4. 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 top of the lowest floor (including basement) elevated to or above two feet above the base flood elevation.
  - a. Within Zone A: [Amended 6-29-2021]
    - i. When no base flood elevation data are available, a base flood elevation shall be determined by either:
      - a) Obtain and reasonably use data available from a federal, state, or other source plus two feet of freeboard; or
      - b) Determine the base flood elevation in accordance with accepted hydrologic and hydraulic engineering practice, plus two feet of freeboard.
    - b. Determinations shall be undertaken by a registered design professional who shall document that the technical methods used reflect currently accepted engineering practice. Studies, analyses, and computations shall be submitted in sufficient detail to allow thorough review and approval.
- 5. Within Zone AO, new construction and substantial improvements shall have the lowest floor (including basement) elevated above the highest adjacent grade at least as high as the depth number specified in feet on the community's Flood Insurance Rate Map enumerated in Subsection C(2) plus two feet (at least three feet if no depth number is specified).
- 6. Within Zones AH and AO, adequate drainage paths are required to guide floodwaters around and away from proposed structures on slopes.
- 7. Residential structures (coastal high hazard areas and Coastal A Zones). The following standards, in addition to the standards in Subsections E(1)(a), Coastal high hazard areas and Coastal A Zones, and E(1)(b), Subdivision proposals, and Subsection E(2), Standards for all structures, apply to new and substantially improved residential structures located in areas of special flood hazard shown as Zones V1-V30, VE or V on the community's Flood Insurance Rate Map designated in Subsection C(2).
  - a. Elevation. New construction and substantial improvements shall be elevated on pilings, columns or shear walls such that the bottom of the lowest horizontal structural member supporting the lowest elevated floor (excluding columns, piles, diagonal bracing attached to the piles or columns, grade beams, pile caps and other members designed to either withstand storm action or break away without imparting damaging loads to the structure) is elevated to or above two feet above base flood elevation so as not to impede the flow of water.

- b. Determination of loading forces. Structural design shall consider the effects of wind and water loads acting simultaneously during the base flood on all building components.
  - i. The structural design shall be adequate to resist water forces that would occur during the base flood. Horizontal water loads considered shall include inertial and drag forces of waves, current drag forces, and impact forces from waterborne storm debris. Dynamic uplift loads shall also be considered if bulkheads, walls, or other natural or man-made flow obstructions could cause wave runup beyond the elevation of the base flood.
  - ii. Buildings shall be designed and constructed to resist the forces due to wind pressure. Wind forces on the superstructure include windward and leeward forces on vertical walls, uplift on the roof, internal forces when openings allow wind to enter the house, and upward force on the underside of the house when it is exposed. In the design, the wind should be assumed to blow potentially from any lateral direction relative to the house.
  - iii. Wind loading values used shall be those required by the building code.
- c. Foundation standards.
  - i. The pilings or column foundation and structure attached thereto shall be adequately anchored to resist flotation, collapse or lateral movement due to the effects of wind and water pressures acting simultaneously on all building components. Foundations must be designed to transfer safely to the underlying soil all loads due to wind, water, dead load, live load and other loads (including uplift due to wind and water).
  - ii. Spread footings and fill material shall not be used for structural support of a new building or substantial improvement of an existing structure.
- d. Pile foundation design.
  - i. The design ratio of pile spacing to pile diameter shall not be less than 8:1 for individual piles (this shall not apply to pile clusters located below the design grade). The maximum center-to-center spacing of wood piles shall not be more than 12 feet on center under load-bearing sills, beams, or girders.
  - ii. Pilings shall have adequate soil penetration (bearing capacity) to resist the combined wave and wind loads (lateral and uplift) associated with the base flood acting simultaneously with typical structure (live and dead) loads, and shall include consideration of decreased resistance capacity caused by erosion of soil strata surrounding the piles. The minimum penetration for foundation piles is to an elevation of five feet below mean sea level (msl) datum if the BFE is +10 msl or less, or to be at least 10 feet below msl if the BFE is greater than +10 msl.
  - iii. Pile foundation analysis shall also include consideration of piles in column action from the bottom of the structure to the stable soil elevation of the site. Pilings may be horizontally or diagonally braced to withstand wind and water forces.
  - iv. The minimum acceptable sizes for timber piles are a tip diameter of eight inches for round timber piles and eight

- inches by eight inches for square timber piles. All wood piles must be treated in accordance with requirements of EPEE-C3 to minimize decay and damage from fungus.
- v. Reinforced concrete piles shall be cast of concrete having a twenty-eight-day ultimate compressive strength of not less than 5,000 pounds per square inch, and shall be reinforced with a minimum of four longitudinal steel bars having a combined area of not less than 1% nor more than 4% of the gross concrete area. Reinforcing for precast piles shall have a concrete cover of not less than 1 1/4 inches for No. 5 bars and smaller and not less than 1 1/2 inches for No. 6 through No. 11 bars. Reinforcement for piles cast in the field shall have a concrete cover of not less than two inches.
  - vi. Piles shall be driven by means of a pile driver or drop hammer, jetted, or augered into place.
  - vii. Additional support for piles in the form of bracing may include lateral or diagonal bracing between piles.
  - viii. When necessary, piles shall be braced at the ground line in both directions by a wood timber grade beam or a reinforced concrete grade beam. These at-grade supports should be securely attached to the piles to provide support even if scoured from beneath.
  - ix. Diagonal bracing between piles, consisting of two-inch-by-eight-inch (minimum) members bolted to the piles, shall be limited in location to below the lowest supporting structural member and above the stable soil elevation, and aligned in the vertical plane along pile rows perpendicular to the shoreline. Galvanized steel rods (minimum diameter 1/2 inch) or cable type bracing is permitted in any plane.
  - x. Knee braces, which stiffen both the upper portion of a pile and the beam-to-pile connection, may be used along pile rows perpendicular and parallel to the shoreline. Knee braces shall be two-by-eight lumber bolted to the sides of the pile/beam, or four-by-four or larger braces framed into the pile/beam. Bolting shall consist of two 5/8-inch galvanized steel bolts (each end) for two-by-eight members, or one 5/8-inch lag bolt (each end) for square members. Knee braces shall not extend more than three feet below the elevation of the base flood.
- e. Column foundation design.
    - i. Masonry piers or poured-in-place concrete piers shall be internally reinforced to resist vertical and lateral loads, and be connected with a movement-resisting connection to a pile cap or pile shaft.
  - f. Connectors and fasteners. Galvanized metal connectors, wood connectors, or bolts of size and number adequate for the calculated loads must be used to connect adjoining components of a structure. Toe nailing as a principal method of connection is not permitted. All metal connectors and fasteners used in exposed locations shall be steel, hot-dipped galvanized after fabrication. Connectors in protected interior locations shall be fabricated from galvanized sheet.
  - g. Beam to pile connections. The primary floor beams or girders shall span the supports in the direction parallel to the

flow of potential floodwater and wave action and shall be fastened to the columns or pilings by bolting, with or without cover plates. Concrete members shall be connected by reinforcement, if cast in place, or (if precast) shall be securely connected by bolting and welding. If sills, beams, or girders are attached to wood piling at a notch, a minimum of two 5/8-inch galvanized steel bolts or two hot-dipped galvanized straps 3/16-inch by four inches by 18 inches each bolted with two 1/2-inch lag bolts per beam member shall be used. Notching of pile tops shall be the minimum sufficient to provide ledge support for beam members without unduly weakening pile connections. Piling shall not be notched so that the cross section is reduced below 50%.

- h. Floor and deck connections.
  - i. Wood two-by-four-inch (minimum) connectors or metal joist anchors shall be used to tie floor joists to floor beams/girders. These should be installed on alternate floor joists, at a minimum. Cross bridging of all floor joists shall be provided. Such cross bridging may be one-by-three-inch members, placed eight feet on center maximum, or solid bridging of same depth as joist at same spacing.
  - ii. Plywood should be used for subflooring and attic flooring to provide good torsional resistance in the horizontal plane of the structure. The plywood should not be less than 3/4-inch total thickness, and should be exterior grade and fastened to beams or joists with 8d annular or spiral thread galvanized nails. Such fastening shall be supplemented by the application of waterproof industrial adhesive applied to all bearing surfaces.
- i. Exterior wall connections. All bottom plates shall have any required breaks under a wall stud or an anchor bolt. Approved anchors will be used to secure rafters or joists and top and bottom plates to studs in exterior and bearing walls to form a continuous tie. Continuous 15/32-inch or thicker plywood sheathing-overlapping the top wall plate and continuing down to the sill, beam, or girder-may be used to provide the continuous tie. If the sheets of plywood are not vertically continuous, then two-by-four-nailed blocking shall be provided at all horizontal joints. In lieu of the plywood, galvanized steel rods of 1/2-inch diameter or galvanized steel straps not less than one inch wide by 1/16-inch thick may be used to connect from the top wall plate to the sill, beam, or girder. Washers with a minimum diameter of three inches shall be used at each end of the 1/2-inch round rods. These anchors shall be installed no more than two feet from each corner rod, no more than four feet on center.
- j. Ceiling joist/rafter connections.
  - i. All ceiling joists or rafters shall be installed in such a manner that the joists provide a continuous tie across the rafters. Ceiling joists and rafters shall be securely fastened at their intersections. A metal or wood connector shall be used at alternate ceiling joist/rafter connections to the wall top plate.
  - ii. Gable roofs shall be additionally stabilized by installing two-by-four blocking on two-foot centers between the rafters at each gable end. Blocking shall be installed a minimum of eight feet toward the house interior from

each gable end.

- k. Projecting members. All cantilevers and other projecting members must be adequately supported and braced to withstand wind and water uplift forces. Roof eave overhangs shall be limited to a maximum of two feet and joist overhangs to a maximum of one foot. Larger overhangs and porches will be permitted if designed or reviewed and certified by a registered professional engineer or architect.
- l. Roof sheathing.
  - i. Plywood, or other wood material, when used as roof sheathing, shall not be less than 15/32 inch in thickness, and shall be of exterior sheathing grade or equivalent. All attaching devices for sheathing and roof coverings shall be galvanized or be of other suitable corrosion-resistant material.
  - ii. All corners, gable ends, and roof overhangs exceeding six inches shall be reinforced by the application of waterproof industrial adhesive applied to all bearing surfaces of any plywood sheet used in the sheathing of such corner, gable end, or roof overhang.
  - iii. In addition, roofs should be sloped as steeply as practicable to reduce uplift pressures, and special care should be used in securing ridges, hips, valleys, eaves, vents, chimneys, and other points of discontinuity in the roofing surface.
- m. Protection of openings. All exterior glass panels, windows, and doors shall be designed, detailed, and constructed to withstand loads due to the design wind speed of 75 mph. Connections for these elements must be designed to transfer safely the design loads to the supporting structure. Panel widths of multiple panel sliding glass doors shall not exceed three feet.
- n. Breakaway wall design standards.
  - i. The breakaway wall shall have a design safe loading resistance of not less than 10 and not more than 20 pounds per square foot, with the criterion that the safety of the overall structure at the point of wall failure be confirmed using established procedures. Grade beams shall be installed in both directions for all piles considered to carry the breakaway wall load. Knee braces are required for front row piles that support breakaway walls.
  - ii. Use of breakaway wall strengths in excess of 20 pounds per square foot shall not be permitted unless a registered professional engineer or architect has developed or reviewed the structural design and specifications for the building foundation and breakaway wall components, and certifies that: 1) the breakaway walls will fail under water loads less than those that would occur during the base flood; and 2) the elevated portion of the building and supporting foundation system will not be subject to collapse, displacement, or other structural damage due to the effects of wind and water loads acting simultaneously on

all building components (structural and nonstructural). Water loading values used shall be those associated with the base flood. Wind loading values shall be those required by the building code.

8. Nonresidential structures (except coastal high hazard areas). The following standards apply to new and substantially improved commercial, industrial and other nonresidential structures located in areas of special flood hazard, in addition to the requirements in Subsections E(1)(b), Subdivision proposals, and E(1)(c), Encroachments, and Subsection E(2), Standards for all structures.
  - a. 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 nonresidential structure, together with attendant utility and sanitary facilities, shall either:
    - i. Have the lowest floor, including basement or cellar, elevated to or above two feet above the base flood elevation; or
    - ii. Be floodproofed so that the structure is watertight below two feet above the base flood elevation, including attendant utility and sanitary facilities, with walls substantially impermeable to the passage of water. All structural components located below the base flood elevation must be capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy.
  - b. Within Zone AO, new construction and substantial improvements of nonresidential structures shall:
    - i. Have the lowest floor (including basement) elevated above the highest adjacent grade at least as high as the depth number specified in feet on the community's FIRM plus two feet (at least three feet if no depth number is specified); or
    - ii. Together with attendant utility and sanitary facilities, be completely floodproofed to that level to meet the floodproofing standard specified in Subsection E(5)(a)[2].
  - c. 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 Subsection E(5)(a)[2], including the specific elevation (in relation to mean sea level) to which the structure is to be floodproofed.
  - d. Within Zones AH and AO, adequate drainage paths are required to guide floodwaters around and away from proposed structures on slopes.
  - e. 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.
9. Nonresidential structures (coastal high hazard areas and Coastal A Zones). In Zones V1-V30, VE and also Zone V if base flood

elevations are available, new construction and substantial improvements of any nonresidential structure, together with attendant utility and sanitary facilities, shall have the bottom of lowest member of the lowest floor elevated to or above two feet above the base flood elevation. Floodproofing of structures is not an allowable alternative to elevating the lowest floor to two feet above the base flood elevation in Zones V1-V30, VE and V.

10. Manufactured homes and recreational vehicles. The following standards in addition to the standards in Subsections E(1), General standards, and E(2), 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.
  - a. Recreational vehicles.
    - i. Recreational vehicles placed on sites within Zones A, A1-A30, AE, AH, AO, V1-V30, V, and VE shall either:
      - a) Be on site fewer than 180 consecutive days;
      - b) Be fully licensed and ready for highway use; or
      - c) Meet the requirements for manufactured homes in Subsection E(7)(b), (c) and (d).
    - ii. A recreational vehicle 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.
  - b. 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 bottom of the frame of the manufactured home chassis 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. Elevation on piers consisting of dry stacked blocks is prohibited.
  - c. Within Zone A, the bottom of the frame of the manufactured home shall be elevated to meet the requirements of Subsection E(3)(a)[2]. [Amended 6-29-2021]
  - d. Within Zone AO, the bottom of the frame of the manufactured home chassis 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 Subsection C(2) plus two feet (at least three feet if no depth number is specified). Elevation on piers consisting of dry stacked blocks is prohibited.
  - e. Within V or VE, manufactured homes must meet the requirements of Subsection E(4).
11. Accessory structures, including detached garages. The following standards apply to new and substantially improved accessory structures, including detached garages, in the areas of special flood hazard shown on the Flood Insurance Rate Map designated in Subsection C(2).
  - a. Within Zones A1-A30, AE, AO, AH, A, accessory structures must meet the standards of Subsection E(2)(a), Anchoring.
  - b. Within Zones A1-A30, AE and AH, and also Zone A if base flood elevation data are available, areas below two feet above the base flood elevation shall be constructed using methods and practices that minimize flood damage.

- c. Within Zones AO and Zone A, if base flood elevation data are not available, areas below three feet above the highest adjacent grade shall be constructed using methods and practices that minimize flood damage.
- d. Structures must be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters in accordance with Subsection E(2)(c), Utilities.
- e. Within Zones V1-V30, VE, and V, accessory structures (unless properly elevated to the base flood elevation plus two feet on piles or columns) must be limited to small, low-value structures that are disposable. If a community wishes to allow unelevated accessory buildings, it must define "small" and "low cost."
- f. Within Zones V1-V30, VE, and V, unelevated accessory buildings must be unfinished inside, constructed with flood-resistant materials, and used only for storage.
- g. Within Zones VI-V30, VE, and V, when an accessory building is placed, the design professional must determine the effect that debris from the accessory building will have on nearby buildings. If the accessory building is large enough that its failure could create damaging debris or divert flood flows, it must be elevated above the base flood elevation plus two feet.

12. Critical facilities. In order to prevent potential flood damage to certain facilities that would result in serious danger to life and health, widespread social or economic dislocation, no new critical facility 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 Maps.

F. Variance procedure.

1. Appeals board.

- a. The Zoning Board of Appeals as established by the City of Lackawanna shall hear and decide appeals and requests for variances from the requirements of this section.
- 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 section.
- 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 section 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 floodwaters 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 6.1(4) and the purposes of this section, the Zoning Board of Appeals may attach such conditions to the granting of variances as it deems necessary to further the purposes of this section.
  - 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.
2. 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 elevation, providing items (i-xii) in Section 6.1(4) 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 1, 4, 5, and 6 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. Notification.
  - i. 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:
    - a) 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
    - b) Such construction below the base flood level increases risks to life and property.
  - ii. Such notification shall be maintained with the record of all variance actions as required in Section 4.4-8 of this section.

#### §11-3 Building Permits.

- A. Applications for building permits shall be submitted to the City of Lackawanna Code Enforcement Officer in accordance with Chapter 75, Building Construction.
- B. No building permit shall be issued unless the applicant has received a zoning permit from the City Zoning Officer in accordance with the provisions of this chapter.

#### §11-4 Zoning Permits.

- A. Authorization. The City Zoning Officer is authorized to approve or disapprove zoning permit applications in accordance with the standards outlined in this chapter.

- B. Application. It shall be unlawful to commence the excavation for, or the construction of, any building or structure, including accessory buildings, or to commence the moving or alteration of any building structure, including accessory buildings, until the City Zoning Officer has issued a zoning permit for such work.
- C. Permit Application Requirements. In order for a Zoning Permit application to be deemed complete it shall include the following at a minimum:
  - 1. The property address and SBL
  - 2. The contact information of the property owner and applicant (if different than the property owner).
  - 3. A site plan that illustrates the proposed change. At a minimum the site plan drawing shall show the following,
    - a. A property survey that shows all property lines and easements,
    - b. The locations of all existing and proposed buildings, roads, parking areas, and landscaping as well as all natural features (wetlands, floodplains, etc.)
- D. Procedure.
  - 1. Applications for zoning permits shall be submitted to the City Zoning Officer.
  - 2. If the proposed excavations, construction, alterations or moving as set forth in the application are in conformity with the provisions of this chapter, the Zoning Officer may issue a zoning permit for such excavation, construction, alteration or moving. The issuance of a zoning permit shall in no case be construed as a waiver for any provision of this chapter that does not fall under the subject of the zoning permit.
  - 3. If a zoning permit is denied, the Zoning Officer shall state such refusal, in writing, with the cause and shall immediately mail notice of such refusal to the applicant at the address indicated on the application.
  - 4. Each order, requirement, decision, interpretation or determination of the Zoning Officer shall be filed in the Zoning Officer's office within five business days from the day its is rendered and shall be a public record.
  - 5. Any applicant, after being denied zoning permit, may appeal the Zoning Officer's findings to the Zoning Board of Appeals

for an interpretation or, if appropriate, a variance. An appeal shall be taken within 60 days after the filing of any order, requirement, decision, interpretation or determination of the Zoning Officer. Where an appeal is requested, the Zoning Officer shall notify and forward all necessary supporting information to the Zoning Board of Appeals Secretary.

6. A zoning permit shall become void 12 months from the date of issuance unless substantial progress has been made by that date on the project described therein.

**§11-5 Site Plan Review.**

- A. Authorization. The Planning and Development Board is authorized to review and approve, approve with modifications or conditions or disapprove site plans in accordance with the standards outlined in this chapter.
- B. Applicability. Site plan review and site plan approval by the City of Lackawanna Planning and Development Board shall be required for all uses, buildings and structures that require site plan approval as outlined in this chapter. Fees outlined and adopted by the City of Lackawanna will apply to all site plan reviews.
  1. No construction or site improvement may commence until site plan approval or a zoning permit, when required, has been granted,
  2. Where the use is identified in the provisions of this chapter as requiring site plan review, the application shall be forwarded to the Planning and Development Board for approval in accordance with the provisions of this chapter.
  3. Site plan review shall not be required for the development of two or fewer single- or two-family lots.
  4. The addition of residential units to a mixed-use development shall be regulated by the provisions for residential development
  5. The following table outlines the level of review required

Type of Development	Site Plan Review	Zoning Permit
<b>RESIDENTIAL</b>		
<b>Up to 4 Residential Units</b> Proposed construction of 3 or 4 residential uses (not on individual lots)		X

<b>5 or More Residential Units</b> Proposed construction of 5 or more residential units (not on individual lots)	X	
<b>SEQRA Type I Actions</b> Any proposed residential development classified as a Type 1 action per 6 NYCRR Part 617	X	
<b>Addition of Accessory Structures</b> Proposed addition of accessory structures greater than 144 SF (garages, sheds, decks, etc.)		X
<b>Modifications to Parking, Loading, or Stacking</b>		X
<b>NON-RESIDENTIAL</b>		
New Construction less than 4,000 SF		X
New Construction greater than 4,000 SF	X	
Addition of less than 750 SF		X
Proposed addition of between 750 and 4000 SF of gross floor area closer than 100 feet to a residential property boundary, as measured from the limit of work shown on the site plan drawing. If no limit of work is shown, the closest property boundary shall be used.	X	
Proposed addition of between 750 and 4000 SF of gross floor area and greater than 100 feet from a residential property boundary, as measured from the work limit show on the site plan drawing. If no limit of work is shown, the		X

closest property boundary shall be used.		
<b>Proposed addition of more than 4000 SF</b>	X	
<b>Modifications to Parking, Loading, or Stacking</b>		X
<b>SEQRA Type I Actions</b> Any proposed residential development classified as a Type 1 action per 6 NYCRR Part 617	X	
<b>Other</b> Proposed modification to a previously approved site plan where the proposed scope is not included in any of the other categories of this section		X

C. Procedure.

1. Before submitting an application for development approval, it is required that each petitioner schedule a pre-application conference with the Zoning Officer, as applicable, to discuss the procedures, standards and regulations required for development approval in accordance with the provisions of this Chapter. Applicants shall provide the following materials at the pre-application conference:
  - a. A draft plan that shows the locations of all existing and proposed buildings, roads, parking areas, and landscaping as well as all natural features (wetlands, floodplains, etc.)
  - b. An accurate property survey that demonstrates the property boundaries, easements, adjacent streets, topography, and other pertinent features.
2. Application. Copies of a site plan and supplementary information along with the complete application and appropriate fees for site plan review shall be submitted to the City Zoning Officer in a quantity to be determined by the City Zoning Officer for distribution to the City Engineer, Fire Department, Police Department, Planning and Development Board and

other review agencies as required (ex. County Planning Department, New York State Department of Transportation where project is on or affects state highways).

3. Who May Submit Applications. Applications shall only be accepted from persons having the legal authority to submit such applications. In general, applications shall be made by the owners or lessees of property, or persons who have contracted to purchase property contingent upon their ability to acquire the necessary approval under this Zoning Ordinance.
  4. Review. Staff and other review agencies shall review and notify the Planning and Development Board in writing of its comments or recommendations at least seven calendar days prior to the scheduled Planning and Development Board meeting regarding the application. The Planning and Development Board shall review the application, site plan and supporting data. In unique or large-scale cases, the Planning and Development Board may retain private, expert consultants to assist in the review.
- D. Site plan contents. A complete site plan application shall include or be accompanied by the following information, as deemed appropriate by the Zoning Officer. During a preapplication meeting the Zoning Officer may waive the requirements set forth in this section as deemed appropriate but may not waive the requirement that a stormwater pollution prevention plan be submitted where required. The plan shall be prepared by a licensed engineer, architect, landscape architect or surveyor.
1. Complete application form
  2. Title of drawings, including name of the development, name, telephone number and address of applicant and the name of the person who prepared the drawing.
  3. Key plan, north point, professional stamp, scale (1 inch = 20 feet or other appropriate scale) and date.
  4. Zoning, land use and ownership of surrounding and adjacent properties, including all structures on adjacent and surrounding properties.
  5. A boundary survey of the proposed development plotted to scale and including its acreage, a legal description thereof and detailing existing topographic features, including contours, spot elevations, large trees, buildings, structures, streets, property lines, utility easements, rights-of-way and land use.
  6. Layout and number of lots.

7. All lot dimensions, including, but not limited to, lot frontage, lot area, building coverage, lot coverage, front yard, side yard, rear yard, and building heights.
8. All improvement dimensions, including, but not limited to, access roads, streets, street names, snow removal/storage areas, parking area, sidewalks, buildings, drains, culverts, retaining walls, fences, etc.
9. Existing roadways, driveways, sidewalks and pedestrian paths immediately adjoining and opposite from the proposed site, including names.
10. Location and dimensions of all parking, loading and stacking areas.
11. Paving, including typical cross sections and profiles of proposed streets, crosswalks, pedestrian walkways and bikeways.
12. Location, proposed use, height, building elevations, floor plans and finished elevations of all structures.
13. Colors, materials, dimensions, access and roof top plans of all structures.
14. Location and proposed development of all open spaces, including parks and playgrounds.
15. Existing and proposed watercourses
16. Drainage plan showing existing and finished grades, stormwater management plan, impact of the watershed and any slopes greater than 5%. The best management practices employed to mitigate the impacts of stormwater management shall be set forth in detail. A copy of the storm drainage analysis shall be submitted for review when required by the City Engineer.
17. Water supply plan, including existing and proposed location of fire hydrants, fire lanes, size of service line and a note indicating backflow preventor.
18. A description of the method of securing public water and location, design and construction materials of such facilities.
19. Sewage disposal method and location, design and construction materials of such facilities.
20. Landscape plan indicating location, type and size of existing trees and vegetation and those to be preserved or removed

as well as location, type and size of trees, vegetation, amenities to be provided, tree staking, plant installation, soil preparation details and all other applicable installation details and calculation of the total landscaped area.

21. Location and proposed development of all buffer areas, including existing vegetative cover.
  22. Location, design and illumination field of all pools, ponds, water features, lighting fixtures, fences and walls.
  23. Location, dimension, design and construction type of all signs.
  24. Required screening and enclosures.
  25. Location of public transit stops and shelters.
  26. Proposed easements, restrictions, covenants and provisions for homeowners' associations and common ownerships.
  27. Location, design and construction of all energy distribution facilities, including electrical, gas, solar and wind energy.
  28. Identification of any state or county permits required for the project's execution and documentation of application for and approval status of all necessary permits from state and county officials.
  29. Additional supporting data or plans deemed necessary and relevant to carry out the Planning and Development Board's responsibility for site plan review upon notification to the proposed developer and their decision to proceed with the application.
  30. A stormwater pollution prevention plan (SWPPP), if required for the proposed development under Article XII of this chapter, together with the recommendation of the Stormwater Management Officer to approve, approve with modifications, or disapprove the SWPPP pursuant to § 230-93B of this chapter
- E. Action By the Planning Board. Within 62 days of the public hearing, or receipt of the application if no public hearing is held, the Board shall, at a regular or special meeting:
1. Approve upon a finding that:
    - a. The proposed site plan is consistent with the goals and objectives of the Comprehensive Plan, and

- b. The proposed site plan is consistent with the intent, objectives and specific requirements of this chapter, and
  - c. Adequate services and utilities will be available prior to occupancy, and
  - d. The site plan is consistent with all applicable laws, and
  - e. If a stormwater pollution prevention plan (SWPPP) was submitted in accordance with § 230-71D(35), the site plan and SWPPP comply with the requirements of Article XII of this chapter. [Added 2-5-2008]
2. Approve with modifications or conditions limiting the use and occupancy of the land or proposed buildings consistent with the intent or purposes of this chapter;
- a. Criteria for review and recommendations. In considering and acting upon site plan reviews and approvals, the Planning and Development Board shall consider and may prescribe conditions as necessary to ensure:
    - i. The development complies with all applicable regulations of this chapter and all other applicable laws.
    - ii. The use is designed, located and proposed to be operated so the public health, safety, welfare and convenience will be protected.
    - iii. The use will not cause substantial injury to the value of the other property in the neighborhood where it is located.
    - iv. The use will be compatible with adjoining development and the character of the neighborhood where it is located.
3. Disapprove the site plan.
- a. The Planning and Development Board shall file a full written record of its minutes and decision with all documents pertaining to the case with the City Clerk, with a copy to the Zoning Officer, and shall mail a copy to the applicant. Where a site plan is denied approval, the Planning and Development Board shall state its reasons for disapproval in writing.
  - b. Costs incurred by the Planning and Development Board for consultation fees or other extraordinary expenses in

connection with the review of a proposed site plan shall be charged to the applicant. The Board shall notify the applicant prior to it incurring any extraordinary expenses and provide an opportunity for the applicant to remove its application to avoid the expenses.

4. Expiration. Site plan approvals shall expire after 12 months unless a successful application for a building permit has been made within that period. One six-month extension may be granted by the Planning and Development Board to obtain the building permit.
5. Alterations. Property owners wishing to make any changes in an approved site plan shall submit a revised site plan review and approval in accordance with the table in §230-71B.
6. Appeal. Any person aggrieved by any decision of the Planning and Development Board may apply to the Supreme Court for a review under Article 78 of the Civil Practice Law and Rules in accordance with General City Law § 27-a, Subdivision 11. Such proceedings shall be instituted within 30 days after the filing of a decision in the office of the City Clerk.
7. Security as condition of approval. As an alternative to the installation of required infrastructure and improvements, the Planning and Development Board may require, as a condition of site plan approval, the property owner to furnish cash, an irrevocable letter of credit, a performance bond or other security sufficient to cover the full cost of the same.

#### §11-6 Notice and Public Hearing Requirements.

- A. Planning Board Discretion. The Planning and Development Board, by majority vote, may require a public hearing for an application under review. If a public hearing is required, it shall be conducted within 62 days of receipt of a complete application.
- B. Mailing Requirements. The Planning and Development Board shall provide written notice by mail of said hearing to the applicant at least 10 days before said hearing and shall give public notice to said hearing in the official newspaper of the City at least five days prior to the date thereof. Where required under General Municipal Law § 239-m the Board shall mail notice of the hearing to the County Planning Board at least 10 days prior to the hearing.

#### §11-7 Use and Area Variances.

- A. Authorization. The Zoning Board of Appeals is authorized to approve, approve with conditions or disapprove area and use variances in accordance with the standards outlined in this chapter.

- B. Applications. On an appeal from an order, requirement, decision or determination of the Zoning Officer or any other administrative official charged with the enforcement of this chapter, where it is alleged that there are practical difficulties or unnecessary hardships in the way of carrying out the strict application of any provision of this chapter, the Zoning Board of Appeals may grant a variance in the strict application of such provision in accordance with this article.
- C. Procedure.
1. Preapplication conference. A preapplication conference shall be held between the City Zoning Officer and the applicant prior to the preparation and submission of a formal application to the Zoning Board of Appeals to determine the basis for the variance request, advise the applicant on procedure, and to identify information necessary for a complete variance application package.
  2. Application.
    - a. A complete application for variance shall be submitted to the Zoning Officer.
    - b. A complete application must include,
      - i. The name and address of the applicant. If the applicant is different from the property owner, a signed affidavit by the record owner granting permission to file the application will be required
      - ii. The address of the subject property and the zoning district it is in,
      - iii. A description of the present improvements and proposed changes to be made under the application, indicating the size of such proposed improvements, material and general construction thereof.
      - iv. A plot plan of the real property to be affected indicating the lot and size of improvements thereon and proposed to be erected thereon.
  3. Public hearing.
    - a. Within 62 calendar days of receipt of a complete application the Zoning Board of Appeals shall hold a public hearing.
    - b. Notices of the public hearing shall be mailed at least five calendar days prior to the date of the hearing to the parties,

property owners within 1,500 feet from the property line, to such other property owners as the Chairman of the Zoning Board of Appeals may direct, to the regional state park commission having jurisdiction over any state park or parkway within 500 feet of the property affected by such appeal and to the County Planning Board, as required by § 239-m of the General Municipal Law.

- c. The public hearing shall be advertised at least once in the official City paper or in a newspaper of general circulation at least five calendar days before the hearing. [Amended 10-19-2016]
- d. The Zoning Board of Appeals may adjourn the hearing for a reasonable period to deliver notice to such other property owners as it decides may be interested in said application or appeal.

#### 4. Decision.

- a. Following the public hearing, the Zoning Board of Appeals shall render a decision of approval, conditional approval, or denial.
- b. The Zoning Board of Appeals shall file a full written record of its minutes and decision with the City Clerk, with a copy to the Zoning Officer and shall mail a copy to the applicant. Where an application is denied, the record shall state the reasons for denial.
- c. Variance application approvals shall expire if the applicant fails to obtain any necessary building permit or to comply with the conditions of said authorization within six months from the date of authorization thereof.
- d. Costs incurred by the Planning and Development Board for consultation fees or other extraordinary expenses in connection with the review of a proposed site plan shall be charged to the applicant.

#### 5. Appeals.

- a. The Zoning Board shall refuse to hold further hearings on a denied application or one substantially similar by the applicant for a period of one year unless the Zoning Board of Appeals shall find that changed conditions have occurred which warrant a reconsideration. Such a rehearing would be allowable only upon a motion initiated by a member of the Zoning Board of Appeals and adopted by the unanimous vote of the members present, but not less than a majority of all members.

b. Any person aggrieved by any decision of the Zoning Board of Appeals may apply to the NYS Supreme Court for a review under Article 78 of the Civil Practice Law and Rules. Such proceedings shall be instituted within 30 days after the filing of a decision in the office of the City Clerk.

D. Criteria for use variance approvals. The Zoning Board of Appeals may grant a use variance, based upon unnecessary hardship, where the applicant has established all of the following factors:

1. The applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence;
2. The alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood;
3. The requested use variance, if granted, will not alter the essential character of the neighborhood; and
4. The alleged hardship has not been self-created.

E. Criteria for area variance approvals. The Zoning Board of Appeals, in the granting of an area variance, shall grant the minimum variance that it shall deem necessary and adequate and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community. The Zoning Board of Appeals may grant an area variance, upon a consideration of the following:

1. Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance;
2. Whether the benefit sought by the applicant can be achieved by some method feasible for the applicant to pursue, other than an area variance;
3. Whether the requested area variance is substantial;
4. Whether the proposed variance will have an adverse effect or impact on the physical and environmental conditions in the neighborhood or district; and

5. Whether the alleged difficulty was self-created.

#### §11-8 Amendments.

##### A. Authority.

1. The regulations, restrictions and boundaries established by this chapter may be amended, supplemented, changed or repealed to meet the growing and changing needs of the City of Lackawanna.
2. The City Council, subject to the provisions and restrictions contained herein, on its own motion, on petition or on recommendation of the Planning and Development Board, by amendment, may supplement, repeal, or change the regulations and provisions of this chapter.

##### B. Procedure.

###### 1. Application.

- a. A petition to amend, change or supplement the text of this chapter or any zoning district, as designated on the Zoning Map, shall be filed with the City Clerk on forms obtained by the Zoning Officer and transmitted to the City Council. The project's status under the State Environmental Quality Review Act shall be determined at this time.
  - b. The petitioner shall submit a conceptual plan showing the extent, location and character of proposed structures, improvements and uses as well as the overall development density.
2. Planning and Development Board review. Each proposed amendment, except those initiated by the City Planning and Development Board, shall be submitted to the Planning and Development Board for an advisory report and recommendation prior to the public hearing held by the City Council.
  3. Planning and Development Board Review Criteria. In making a favorable recommendation the Planning and Development Board shall take into consideration and make findings based on the following,
    - a. The proposed zoning designation or language is generally consistent with the policies of the adopted Comprehensive Plan and this Chapter,

- b. Whether or not there are adequate services or utilities available or proposed to be made in the construction of the development,
- c. Compatibility with the present zoning and conforming uses of the nearby properties and with the character of the neighborhood,
- d. Suitability of the subject property for the uses permitted by the current versus the proposed district,
- e. Whether the proposed change tends to improve the balance of uses or meets a specific demand within the city.

**4. Public hearing.**

- a. Following the receipt of a recommendation by the Planning and Development Board, the City Council shall hold a public hearing for the proposed amendment within 62 days of the Planning and Development Board's recommendation.
- b. The public hearing shall be advertised at least once in the City of Lackawanna official newspaper at least 10 days before the hearing. The notice shall state the general nature of the proposed amendment in such reasonable detail as will give adequate notice of the subject of the hearing and shall name the place or places where copies of the proposed amendment may be examined.
- c. A written notice of any proposed change or amendment affecting property within 500 feet of the boundary of any state park shall be given to the regional state park commission having jurisdiction over such facilities at least 10 days prior to the date of such hearing. At the public hearing, full opportunities to be heard shall be given to any citizen and all parties in interest.

**5. Decision.**

- a. An amendment shall be effected by a simple majority vote of the City Council except that the favorable vote of at least 75% of the members of the City Council shall be required for the passage of an amendment which is protested by the owners of 20% or more of the area of land included in the proposed change or the land within 100 feet from the street frontage of such land.

- b. The City Council shall file a full written record of its minutes and decision with all documents pertaining to the case with the City Clerk, with a copy to the Zoning Officer, and shall mail a copy to the applicant. Where an amendment is denied approval, the City Council shall state its reasons for disapproval in writing.

#### §11-9 Special Use Permits.

##### A. Applicability

1. Special uses within the zoning districts are generally considered to be uses which are appropriate in a particular zoning district but because of their potential for incompatibility with adjacent uses require individual review and may require the imposition of conditions to assure the appropriateness of the use in a particular zoning district.
2. A special use permit shall be required in accordance with the district use tables in
3. The Zoning Board of Appeals shall hear and decide all applications for special use permits in accordance with § 27-b of NYS General City Law, with the exception of Solar Energy Systems,
4. The City Council shall hear and decide all applications for special use permits in accordance with § 27-b of NYS General City Law for Solar Energy Systems.

##### B. Application Requirements

1. An application shall be made in accordance with the requirements §230-70C of this Chapter.
2. An application shall not be considered complete until a SEQR determination under 6 NYCCR Part 617 Environmental Quality Review, as amended, can be made.

##### C. Action by the Zoning Enforcement Officer. The Zoning Enforcement Officer shall prepare a report that reviews the request for a special use permit.

##### D. Action by the Zoning Board of Appeals.

1. Within 62 days following receipt of the application, the ZBA shall schedule a public hearing and give notice in accordance with § 230-72, Notice and Public Hearing Requirements.

2. After review of the special use permit application and the public hearing, the ZBA shall make written findings of approval, approval with modifications or conditions, or denial.
3. After conducting the public hearing, the ZBA shall render a decision within 62 days thereafter. The time within which the decision shall be rendered may be extended by mutual consent of the petitioner and the Board.
4. The ZBA may approve, approve with modifications, or disapprove the application for a special use permit
5. The ZBA shall have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed special use permit. Upon approval of a special use permit, any such conditions shall be met in connection with issuance of permits by applicable agents and officers of the City.

E. Action by the City Council.

1. Following completion of Planning and Development Board review of a request for a Tier III Solar Energy System, the City Council shall schedule a public hearing and give notice in accordance with §230-72, Notice and Public Hearing Requirements. A further public notice shall be published and paid for by the petitioner when a hearing postponement is requested by the petitioner.
2. If the petitioner does not request a public hearing before the City Council as provided for by this Chapter within six months after the Planning and Development Board makes its report of a request for a Tier III Solar Energy System, the petition shall be deemed withdrawn.
3. Upon request, the City Council shall hold the public hearing and render a decision on a request for a Tier III Solar Energy System within 62 days thereafter. The time within which the City Council shall render a decision may be extended by mutual consent of the petitioner and the City Council.
4. The City Council may approve, approve with modifications, or disapprove the application for a special use permit for a Tier III Solar Energy System.
5. The City Council shall have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed special use permit for a Tier III Solar Energy System. Upon approval of a special use permit, any such conditions shall be met in connection with issuance of permits by applicable agents and officers of the

Town.

- F. Review Criteria. In rendering a decision, the ZBA and the City Council, where applicable, shall consider and make findings that the proposed use:
1. Will be generally consistent with the policies of the Comprehensive Plan;
  2. Meets any specific criteria set forth in this Chapter;
  3. Will be compatible with existing uses adjacent to and near the property;
  4. Will be in harmony with the general purpose of this Chapter;
  5. Will not tend to depreciate the value of adjacent property;
  6. Will not create a hazard to health, safety or the general welfare;
  7. Will not alter the essential character of the neighborhood nor be detrimental to the neighborhood residents; and
  8. Will not otherwise be detrimental to the public convenience and welfare.
- G. Conditions on Special Use Permits. The ZBA and the City Council, where applicable, may impose such conditions upon the premises benefited by a special use permit as may be necessary to prevent or minimize adverse effects upon other property in the neighborhood, including limitations on the time period for which the permit is granted. Such conditions shall be expressly set forth in the resolution authorizing the special use permit.
- H. Notice of Decision. The decision of the ZBA and City Council, where applicable, shall be filed in the City Clerk's Office within five business days after the decision is rendered, and a copy mailed to the petitioner.
- I. Renewal of Special Use Permits with Specific Time Periods. Special use permits that have been issued for specific time periods are subject to review for compliance with all of the conditions imposed at the time of approval of the initial permit. Following a public hearing on the matter, the ZBA and City Council, where applicable, may deny a renewal of a special use permit when any of the following apply:

1. The petitioner has failed to comply with one or more of the conditions of the prior approval;
2. Substantial new issues regarding the permit conditions during the operation of the use have arisen;
3. The general requirements of this Zoning Ordinance have not been met;
4. There are changes in the area or neighborhood which would be incompatible with the special use.

J. Period of Validity.

1. A special use permit shall become null and void twelve months after the date on which it was issued unless the special use is established within twelve months of the date of ZBA or City Council approval.
2. A special use permit shall become null and void upon a finding by the Zoning Enforcement Officer that any of the conditions in the permit have been violated.
3. A special use permit shall be deemed to authorize only the particular use or its operation for which it was issued, and such permit shall automatically expire and cease to be of any force or effect if such use shall, for any reason, be discontinued for a period of six consecutive months.

§11-10 Enforcement and Penalties.

- 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 chapter and any other applicable regulations.
- B. Whenever a violation of this chapter occurs, any person may file a written complaint with the Zoning Officer who shall properly record such complaint and immediately investigate and report to the City Council. Complaints regarding the State Uniform Building Code shall be filed with the City Director of Development.
- C. Whenever such persons shall have been duly notified by the City Council of the City of Lackawanna, New York, or its duly authorized official, or the Zoning Officer or by service or summons in a prosecution or in any other way that they are committing such violation of this chapter, each week that they shall continue such violation after such notification shall constitute a separate offense punishable by a like fine or penalty.

- D. Any person, firm or corporation who violates, disobeys, neglects or refuses to comply with any provision of this chapter shall be guilty of an offense and upon conviction thereof shall be subject to a fine of not more than \$350 or imprisonment for a period of not more than 15 days, or both, for conviction of a first offense. For conviction of a second offense within five years of the first, a fine not less than \$350 nor more than \$700 or imprisonment not to exceed 15 days, or both, may be imposed. Upon conviction of a third or subsequent offense, all of which were committed within a period of five years, a fine not less than \$700 nor more than \$1,000 or imprisonment for a period not to exceed 15 days, or both. Such fines or penalties shall be collected as like fines or penalties are now by law collected.
- E. The City of Lackawanna may pursue each violation as a civil remedy for injunction or as criminal prosecution; each shall be mutually exclusive remedies. Nothing herein contained shall prevent the City of Lackawanna from taking such other lawful action as necessary to prevent or remedy an infraction.
- F. Where appropriate, notification of noncompliance will be forwarded to appropriate government enforcement agencies including the Federal Emergency Management Agency.

**§11-11 Fees.**

Special permit fees and site plan review fees shall be collected and paid according to the following fee structure as may be amended by the Council.

- A. Special use permit/use and area variances/zoning permit/zoning classification change: \$100.
- B. Site plan review.

Area (acres)	Fee
Less than 0.5	\$50
0.5 to 1.0	\$75
1.0 to 2.0	\$150

2.0 to 5.0	\$250
Greater than 5.0	\$250, plus \$50 per acre.