

ORDINANCE No. 05-67

AN ORDINANCE OF THE TOWN OF MIAMI LAKES, FLORIDA, AMENDING ORDINANCE 03-34(B) PERTAINING TO THE TOWN'S FLOODPLAIN MANAGEMENT REGULATIONS; PROVIDING FOR REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the National Flood Insurance Program (the "NFIP") offers flood insurance at more affordable rates than are generally available from private insurers; and

WHEREAS, in order for the residents of the Town of Miami Lakes (the "Town") to be eligible for participation in the NFIP, the Town adopted floodplain management regulations on May 13, 2003; and

WHEREAS, the Town Engineer has been in contact with the Federal Emergency Management Agency ("FEMA") in order to determine how to improve the Town's NFIP rating, in order to provide additional savings to Town residents in their flood insurance; and

WHEREAS, Town staff has determined that certain changes may be implemented by the Town through the adoption of an amendment to the current floodplain management regulations ordinance; and

WHEREAS, the Town Council finds that the adoption of these amendments to the floodplain regulations is in the best interests of the Town.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF MIAMI LAKES, FLORIDA, AS FOLLOWS¹:

¹ / PROVISIONS ADDED TO EXISTING TEXT ARE SHOWN BY UNDERLINE; PROVISIONS DELETED FROM EXISTING TEXT ARE SHOWN BY ~~STRIKETHROUGH~~.

Section 1. The above recitals are true and correct and are incorporated herein by this reference.

Section 2. Amendments to Code. Chapter 11-C of the Town Code is hereby amended to read as follows:

**“CHAPTER 11C
DEVELOPMENT WITHIN FLOOD HAZARD DISTRICTS**

Sec. 11C-1. Statutory Authorization.

This Chapter is authorized pursuant to the Town’s Home Rule Authority granted in Article VIII, Section 2 of the Florida Constitution and Chapter 166, Florida Statutes which authorizes the Town to adopt regulations designed to promote the public health, safety and general welfare of its citizenry.

Sec. 11C-2. Findings of Fact.

- (a) Flood hazard areas exist within the Town which are subject to periodic inundation which can result in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety and general welfare of the Town.
- (b) Flood losses may be caused by the cumulative effect of obstructions in floodplains causing increases in flood heights and velocities, and by the occupancy in flood hazard areas by uses vulnerable to floods or hazardous to other lands which are inadequately elevated, flood-proofed, or otherwise unprotected from flood damages.

Sec. 11C-3 Purpose.

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

- (a) Restrict or prohibit uses which are dangerous to health, safety and property due to water or erosion hazards, which result in damaging increases in erosion or in flood heights and 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 flood plains, stream channels and natural protective barriers, which are involved in the accommodation of flood waters;
- (d) Control filling, grading, dredging, and other development which may increase erosion or flood damage; and
- (e) Prevent or regulate the construction of flood barriers which will unnaturally divert flood waters or which may increase flood hazards to other lands.

Sec. 11C-4 Objectives.

The objectives of this Chapter are:

- (a) To protect human life and health;
- (b) To minimize expenditure of public money for costly flood control projects;
- (c) To minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- (d) To minimize prolonged business interruptions;
- (e) To minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, and streets and bridges located in floodplains;
- (f) To help maintain a stable tax base by providing for the sound use and development of flood prone areas in such a manner as to minimize flood blight areas; and
- (g) To ensure that potential home buyers are notified that property is in a flood hazard area.

Sec. 11C-5 Definitions.

The following definitions shall apply solely for use in Chapter 11C of the Town Code. Unless specifically defined below, words or phrases used in this Code shall be interpreted so as to give them meaning they have in common usage and to give this Chapter its most reasonable application.

(a) *Accessory Structure (Appurtenant Structure)* shall mean a structure, which is located on the same parcel of property as the principal structure and the use of which is incidental to the use of the principal structure, constituting a minimal initial investment, and not to be used for human habitation and be designed to have minimal flood damage potential.

(b) *Addition (To an Existing Building)* shall mean any walled and roofed expansion to the perimeter of a building in which the addition is connected by a common load-bearing wall other than a firewall, including any walled and roofed addition, which is connected by a fire wall or is separated by independent perimeter load-bearing.

(c) *Appeal* shall mean a request for a review of the Floodplain Management Administrator's interpretation of any provision of this Chapter.

(d) *Area of Special Flood Hazard* shall mean the land in the floodplain within the Town subject to a one percent (1%) or greater chance of flooding in any given year.

(e) *Base Flood or 100 Year Flood* shall mean a flood having a one percent (1%) chance of being equaled or exceeded in any given year.

(f) *Base Flood Elevation* means the highest water surface elevation associated with the base flood.

(g) *Basement* shall mean that portion of a building having its floor sub-grade (below ground level) on all sides.

(h) *Breakaway Wall* shall mean 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.

(i) *Building* shall mean the same as the word "Structure" defined herein.

(j) *Critical facility* means a facility for which even a slight chance of flooding might be too great, including, but not limited to, schools, nursing homes, hospitals, police, fire and emergency response installations, installations which produce, use or store hazardous materials or hazardous waste.

(k) *Development* shall mean any man-made change to improved or unimproved real estate, including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavating, drilling operations, or permanent storage of materials or equipment.

(l) *Elevated Building* shall mean a non-basement building built to have the lowest floor elevated above the ground level by means of fill, solid foundation perimeter walls, pilings, columns (posts and piers), shear walls or breakaway walls.

(m) *Encroachment* shall mean the advance or infringement of uses, plant growth, fill, excavation, buildings, permanent structures or development into a floodplain, which may impede or alter the flow capacity of a floodplain

(n) *Existing Construction* shall mean any structure for which the start of construction commenced before ~~June 18, 1974~~ September 29, 1972, the date of the initial Miami-Dade County Flood Insurance Study.

(o) *Existing Subdivision* shall mean a subdivision for which the construction of facilities for servicing the lots on which the subdivisions are to be affixed (including at a minimum the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before ~~June 18, 1974~~ September 29, 1972, the date of the initial Miami-Dade County Flood Insurance Study.

(p) *Expansion to a Subdivision* shall mean the preparation of additional sites by the construction of facilities for servicing the lots on which the subdivisions are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

(q) *Flood or Flooding* shall mean a general and temporary condition of partial or complete inundation of normally dry land areas from either the overflow of inland or tidal waters, or the unusual and rapid accumulation or runoff of surface waters from any source.

(r) *Flood Boundary and Floodway Map (FBFM)* shall mean the official map on which FEMA or the Federal Insurance Administration (FIA) has delineated the areas of flood hazards and regulatory floodway.

(s) *Flood Hazard Boundary Map (FHBM)* shall mean an official map of the Town issued by the Federal Emergency Management Agency (FEMA), where the boundaries of the areas of special flood hazard have been defined as Zone A.

(t) *Flood Insurance Rate Map (FIRM)* shall mean an official map of the Town on which FEMA has delineated the areas of special flood hazard and/or risk premium zones.

(u) *Flood Insurance Study (FIS)* shall mean the official hydraulic and hydrologic report provided by FEMA, containing flood profiles, the FIRM, FHBM and the water surface elevation of the base flood.

(v) *Flood Plain* shall mean any land area susceptible to flooding.

(w) *Floodplain Management Administrator or Administrator* shall mean the individual designated by the Town Manager to administer and enforce this Chapter.

(x) *Floodproofing* shall mean any combination of structural and non-structural additions, changes, or adjustments to a structure(s) which reduces or eliminates flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

(y) *Flood Way* shall mean 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 one (1) foot.

(z) *Floodway Fringe* means that area of the floodplain on either side of the regulatory floodway where encroachment may be permitted without additional hydraulic and/or hydrologic analysis.

(aa) *Functionally Dependent Facility* shall mean a facility which cannot be used for 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, or ship repair; and not including long-term storage, manufacturing, sales, or service facilities.

(bb) *Highest Adjacent Grade* shall mean the highest natural elevation of the ground surface, prior to the start of construction, next to the proposed walls of a building.

(cc) *Historic Structure* shall mean any structure that is:

- (1) Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;

- (2) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
- (3) Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or
- (4) Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
 - (i) By an approved state program as determined by the Secretary of the Interior; or
 - (ii) Directly by the Secretary of the Interior in states without approved programs.

(dd) Lowest Floor shall mean the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, used solely for parking of vehicles, building access, or storage in an area other than a basement is not considered a building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of the non-elevation design requirements of this Chapter.

(ee) Mangrove Stand shall mean an assemblage of mangrove trees which is mostly low trees noted for a copious development of interlacing adventitious roots above the ground and which contain one or more of the following species: black mangrove (*Avicennia nitida*); red mangrove (*Rhizophora mangle*); white mangrove (*Longunculariaracemosa*); and buttonwood (*Conocalpus erecta*).

(ff) Mean Sea Level shall mean the average height of the sea for all stages of the tide used as a reference for establishing various elevations within the floodplain or the National Geodetic Vertical Datum (NGVD).

(gg) National Geodetic Vertical Datum (NGVD) shall mean a vertical control used as a reference for establishing varying elevations within the floodplain as corrected in 1929.

(hh) New Construction shall mean any structure for which the "start of construction" commenced after June 18, 1974, including any subsequent improvements to such structure.

(ii) *New Subdivision* shall mean a subdivision for which the construction of facilities for servicing the lots on which the subdivisions are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after June 18, 1974.

(jj) *Start of Construction* (for other than new construction or substantial improvements under the Coastal Barrier Resources Act), includes substantial improvement, and shall mean the date the building permit was issued, provided the actual start of construction, repair, reconstruction, or improvement was within 180 days of the permit date. The actual start means the first placement of permanent construction of a building on a site, such as the pouring of slabs or footings, installation of piles, construction of columns or any work beyond the stage of excavation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers or foundations or the erection of temporary forms, nor does it include the installation on the property 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.

(kk) *Structure* shall mean a walled and roofed building that is principally above ground, a gas or liquid storage tank.

(ll) *Substantial Damage* means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed ~~fifty~~forty-four percent (~~50~~44%) of the market value of the structure before the damage occurred.

(mm) *Substantial Improvement* shall mean any combination of repairs, reconstruction, rehabilitation, alteration, additions or improvements to a structure, taking place during a twelve-month period, in which the cumulative cost equals or exceeds ~~fifty~~forty-four (~~50~~44%) percent of the fair market value of the structure. The fair market value of the structure shall be (1) the appraised value of the structure prior to the start of the initial repair or improvement, or (2) in the case of damage, the value of the structure prior to the damage occurring. This definition also includes substantial damage. For the purposes of this definition, "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the building.

(nn) *Substantially Improved Existing Subdivisions* shall mean a repair, reconstruction, rehabilitation or improvement of the streets, utilities and pads which

equals or exceeds ~~forty-four~~ fifty-four (5044%) percent of the value of the streets, utilities and pads before the repair, reconstruction or improvement commenced.

(oo) *Variance* is a grant of relief from this Chapter that permits construction in a manner otherwise prohibited by this Chapter.

Sec. 11C-6. Applicability; Basis for Establishing Area of Special Flood Hazard; Development Permit; Violations; Enforcement.

- (a) Applicability. This Chapter shall apply to all areas of flood hazard within the jurisdiction of the Town of Miami Lakes.
- (b) Basis For Establishing Area of Special Flood Hazard. The areas of special flood hazard identified by the FEMA in its Flood Insurance Study and Flood Insurance Rate Map for Miami-Dade County, Florida dated March 2, 1994 with accompanying maps and other supporting data, and any revision thereto, are adopted by reference.
- (c) Development Permit. A Development Permit shall be required in conformance with the provision of this Chapter prior to the commencement of any development activities.
- (d) Violations. Commencement of any development activities regulated under this Chapter, including but not limited to, locating, extending, converting or structurally altering any structure or land, without first obtaining a Development Permit shall be considered a violation of the Town Code.
- (e) Enforcement. A violation of this Chapter shall be enforced in accordance with Chapter 8CC of the Town Code. A violation of any variance granted under this Chapter shall also be considered for enforcement purposes a Town Code violation enforceable through Chapter 8CC of the Town Code. Each day that a violation continues shall be deemed a separate violation. This chapter shall also be subject to enforcement under Chapter 162, Florida Statutes. Enforcement may also be by suit for declaratory, injunctive or other appropriate relief in a court of competent jurisdiction.

Sec. 11C-7. Permit Procedures.

- (a) Application. Application for a Development Permit shall be made to the Administrator on forms furnished by Town prior to the start of any development activities. The application shall include:

- (1) Plans drawn to scale showing the nature, location, dimensions, and elevations of the area, existing or proposed structures, earthen fill, storage or materials or equipment; drainage facilities, and the location of the same;
- (2) Elevation in relation to mean sea level of the proposed lowest floor (including basement) of all structures;
- (3) Elevation in relation to mean sea level to which any non-residential structure will be floodproofed;
- (4) A certificate from a registered professional engineer or architect that any non-residential floodproofed structure will meet the flood-proofing criteria in the Code; and
- (5) Description of the extent to which any watercourse will be altered or relocated as a result of a proposed development.

(b) Construction Stage.

After issuance of a Development Permit and during the construction of the structure or building, the permittee shall:

- (1) Provide a regulatory floor elevation or flood-proofing certification after the lowest floor is completed. Upon placement of the lowest floor, or for non-residential structures, flood-proofing, whichever is applicable, it shall be the duty of the permit holder to submit to the Administrator certification of the elevation of the lowest floor, or flood-proofed elevation, whichever is applicable, as built in relation to mean sea level. Said certification shall be prepared by or under the direct supervision of a registered land surveyor or professional engineer and certified by same. When flood-proofing is utilized for a particular building, said certification shall be prepared by or under the direct supervision of a professional engineer or architect and certified by same. Any work undertaken prior to and without submission of the certification shall be at the permit holder's risk .
- (2) The Administrator shall review the referenced floor elevation survey data submitted. Deficiencies detected by such review shall be corrected by the permit holder prior to further progressive work being permitted to proceed. Failure to submit the survey or failure to make said corrections required hereby, shall be cause to issue a stop-work order.

Sec. 11C-8. Duties and Responsibilities of Administrator.

Duties of the Administrator shall include, but shall not be limited to:

- (a) Review all development permit applications to assure that the permit requirements of this Chapter have been satisfied.
- (b) Advise permittee that additional federal or state permits may be required. If specific federal or state permit are required, require that copies of such permits be provided and maintained on file with the development permit.
- (c) Notify adjacent communities and the appropriate state agencies prior to any alteration or relocation of a watercourse and submit evidence of such notification to FEMA.
- (d) Assure that maintenance is provided within the altered or relocated portion of said watercourse so that the flood carrying capacity is not diminished.
- (e) Verify and record the actual elevation, in relation to mean sea level, of the lowest floor (including basement) of all new or substantially improved structures, in accordance with this Chapter.
- (f) Verify and record the actual elevation, in relation to mean sea level, to which the new or substantially improved structures have been floodproofed, in accordance with this Chapter.
- (g) When flood-proofing is utilized for a non-residential structure, the Administrator shall obtain certification as well as the operational and maintenance plan from a registered professional engineer or architect.
- (h) Where interpretation is needed as to the exact location of boundaries of the areas of special flood hazard the Administrator shall make the necessary interpretation. The applicant contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in this Chapter.
- (i) When base flood elevation data or floodway data have not been provided in accordance with this Chapter, the Administrator shall obtain, review and reasonably utilize any base flood elevation and floodway data available from a federal, state or other source, in order to administer the provisions of this Chapter.
- (j) All records pertaining to the provisions of this Chapter shall be maintained by the designated Administrator and shall be open for public inspection.

Sec. 11C-9 Provisions for Flood Hazard Reduction.

(a) General Standards. In all areas of special flood hazard the following provisions are required:

1. New construction and substantial improvements of existing structures shall be anchored to prevent flotation, collapse or lateral movement of the structure.
2. New construction and substantial improvements of existing structures shall be constructed with materials and utility components resistant to flood damage.
3. New construction or substantial improvements of existing structures shall be constructed by methods and practices that minimize flood damage.
4. All electrical, heating, and air conditioning equipment, ventilation, plumbing, and other service facilities shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.
5. New and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system.
6. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters.
7. On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during flooding.
8. Any alteration, repair, reconstruction, additions or improvements to a structure that is in compliance with the provisions of this Code shall meet the requirements of “new construction” as contained herein.
9. Any alteration, repair, reconstruction, or improvement to a structure that is not compliant with the provisions of this Chapter, only if said non-conformity is not furthered, extended, or replaced.

(b) Specific Standards. In all areas of special flood hazard where base flood elevation data has been provided as set forth in this Chapter, the following provisions are required:

1. Residential Construction. New construction or substantial improvement of any residential structure shall have the lowest floor, including basement, mechanical and utility equipment, and ductwork, elevated no lower than one (1) foot above

the base flood elevation. Should solid foundation perimeter walls be used to elevate a structure, openings sufficient to facilitate automatic equalization of flood hydrostatic forces on both sides of exterior walls shall be provided in accordance with standards of the Code.

2. Non-Residential Construction. New construction or substantial improvement of any commercial, industrial, or non-residential structure shall have the lowest floor, including basement, mechanical and utility equipment, and ductwork, elevated no lower than one (1) foot above the base flood elevation. ~~Structures located in A-zones, together with attendant utility and sanitary facilities, may be flood-proofed in lieu of elevation provided that all areas of the structure below the base flood elevation are designed to be~~ The structure may also be floodproofed to a level no lower than one (1) foot above the base flood elevation, provided that all areas of the building (including mechanical and utility equipment) below the required elevation are water tight with walls substantially impermeable to the passage of water, and structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effect of buoyancy. A registered professional engineer or architect shall certify that the design and methods of construction are in accordance with accepted standards of practice for meeting the provisions above, and shall provide such certification as well as the operational and maintenance plan to the Administrator as set forth in the Chapter.

3. Elevated Buildings. New construction or substantial improvements of ~~existing elevated structures~~buildings that include ~~any fully enclosed areas located below the base flood elevation and~~ formed by foundation and other exterior walls shall be designed to preclude finished living space below the base flood elevation by providing openings in each wall having a total net area of not less than 50 percent of the total wall area subject to flooding. At least one opening per wall shall be no higher than one (1) foot above grade to allow for the entry and exit of floodwaters so as to be a flood resistant or unfinished enclosure and designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of flood waters.
 - a. ~~Designs for complying with this requirement must either be certified by a professional engineer or architect or meet the following minimum criteria:~~
 - 1) ~~Provide a minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding;~~

- ~~2) The bottom of all openings shall be no higher than one foot above grade; and~~
 - ~~3) Openings may be equipped with screens, louvers, valves, or other coverings or devices provided they meet the area requirements in 11C-9(b)(3)(a)(1) and permit the automatic flow of flood waters in both directions.~~
- ~~b. Access to the enclosed area shall be the minimum necessary to allow for parking of vehicles (garage door), limited storage of maintenance equipment used in connection with the premises (standard exterior door) or entry to the living area (stairway or elevator).~~
 - ~~e. The interior portion of such enclosed area shall not be partitioned or finished into separate rooms.~~
4. Floodways. Properties located within areas of special flood hazard established in the Basis For Area of Special Flood Hazard, are areas designated as floodways. A floodway may be an extremely hazardous area due to velocity flood waters, debris and erosion potential. In addition, the area must remain free of encroachment in order to discharge the base flood without increased flood heights. Therefore, the following provision shall apply:
 - a.
 - a. Prohibit encroachments, including earthen fill, new construction, substantial improvements and other development within the regulatory floodway unless certification with supporting technical data is provided by a registered professional engineer demonstrating that encroachments shall not result in any increase in flood levels during occurrence of the base flood discharge. Only if this condition is satisfied, then all new construction and substantial improvements shall comply with all other applicable Provisions of the Flood Hazard Reduction.
 - b. Notwithstanding any other provisions of this Section, the Town may permit encroachments within the adopted regulatory floodway that would result in an increase in Base Flood Elevations provided the Town first applies for a conditional FIRM and floodway revision, fulfills the requirements for such revisions and receives the approval of the Floodplain Administrator.
5. Buildings on Fill. A residential or non-residential building may be constructed on permanent fill in accordance with the following:
 - a. The fill shall be placed in layers no greater than one (1) foot deep before compacting and shall extend at least ten (10) feet beyond the foundation of the building before sloping below the base flood elevation; and

- b. The top of the fill shall be above the base flood elevation. However, the ten (10) foot minimum required in Section 11C-9(b)(5)(a) may be waived by the Floodplain Management Administrator if a structural engineer certifies an alternative method to protect the building from damage due to erosion, scour, and other hydrodynamic forces; and
 - c. The fill shall not adversely affect the flow or surface drainage from or onto neighboring properties.
6. Critical Facilities. New and substantially improved critical facilities shall be constructed on properly compacted fill and have the lowest floor (including basement) elevated at least one (1) foot above the elevation of the 500 year flood.
- (c) Standards For Streams Without Established Base Flood Elevation and/or Floodways. Located within the areas of special flood hazard where streams exist but where no base flood data has been provided or where base flood data has been provided without floodways, the following provisions apply:
- 1. When base flood elevation data and floodway data have not been provided in accordance with the Code, the Floodplain Management Administrator shall obtain, review, and reasonably utilize any base flood elevation and floodway data available from a federal, state, or other source, in order to administer the provisions of the Code. If data are not available from outside sources, then the following provisions shall apply:
 - a. No encroachments, including fill material or structures, shall be located within a distance of twenty (20) feet each side from the top of the bank unless certification by a registered professional engineer is provided demonstrating that such encroachment shall not result in any increase in flood levels during the occurrence of the base flood discharge.
 - b. New construction and substantial improvements of existing structures shall have the lowest floor of the lowest enclosed area (including basement) elevated no less than three (3) feet above the highest adjacent grade at the building site.
 - 2. When base flood elevation data without regulatory floodway has been provided, the following provisions shall apply:
 - a. Until a regulatory floodway is designated, no new construction, substantial improvements, or other development (including fill) shall be permitted within Zones A1-30 and AE on the Town's FIRM, unless it is

demonstrated 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 point within the community.

(d) Standards For Subdivision Proposals.

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

Sec. 11C-10. Variances.

- (a) The Town Council shall hear and decide appeals of decisions of the Administrator and requests for variances from the requirements of this Chapter.
- (b) The Town Council shall hear and decide appeals when it is alleged an error in any requirement, decision or determination is made by the Floodplain Management Administrator in enforcement or administration of this Chapter.
- (c) Variances from this Chapter may be issued for the repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continue designation as an "historic structure" and the variance is the minimum necessary to preserve the historic character and design of the structure.
- (d) In reviewing such applications, the Town Council shall consider all technical evaluations, all relevant factors, all standards specified in other sections of this Chapter, and the following:

1. The danger that materials may be swept onto other lands to the injury of others;
 2. The danger to life and property due to flooding or erosion damage;
 3. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
 4. The importance of the services provided by the proposed facility to the community;
 5. The necessity of a facility to a waterfront location, in the case of a functionally dependent use;
 6. The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;
 7. The compatibility of the proposed use with existing and anticipated development;
 8. The relationship of the proposed use to a comprehensive plan and floodplain management program for that area;
 9. The safety of access to the property in times of flood for ordinary and emergency vehicles;
 10. The expected heights, velocity, duration, rate of rise and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site; and
 11. The costs of providing governmental services during and after flood conditions including 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 listed above, and the purposes of this Chapter, the Town Council may attach such conditions to the granting of a variance as it deems necessary to further the purposes of this Chapter.
- (f) Variances from this Chapter shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.

- (g) Conditions for Variances from this Chapter:
1. Variances shall only be issued when the following applies:
 - a. A showing of good and sufficient cause;
 - b. A determination that failure to grant the variance would result in exceptional hardship; and
 - c. A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisance, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.
 2. Any applicant to whom a variance is granted shall be given written notice specifying the difference between the base flood elevation and the elevation to which the building is to be built and stating that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.
 3. The Town shall notify the applicant in writing over the signature of the Building Official that (i) the issuance of a variance to construct a structure below the base flood level will result in increased premium rates for flood insurance up to amounts as high as \$25 for \$100 of insurance coverage and (ii) such construction below the base flood level increases risks to life and property. Such notification shall be maintained with a record of all variance actions.
 4. The Town shall (i) maintain a record of all variance actions, including justification for their issuance, and (ii) report such variances issued in its annual or biennial report submitted to the Floodplain Administrator.
 5. The Town Clerk shall maintain the records of all appeal actions and report any variances to the Federal Emergency Management Agency upon request.
- (h) Applications for variances of this Chapter shall be processed in accordance with Ordinance 04-52, Article 3, Division 3.5 of the Town Code.

Sec. 11C-11. Calculating Substantial Improvement and Damage.

For the purpose of calculating substantial improvements and/or substantial damage, the following procedure shall be utilized:

- (a) The costs of improvements or repairs for a project shall be obtained from one of the following sources:
 - 1. Detailed cost estimate of the improvements or repairs from the licensed general contractor of record; or
 - 2. A cost estimate prepared using professional construction estimation software, such as R.S. Means or the Federal Emergency Management Agency's residential substantial damage estimation program, as prepared by a licensed architect or engineer.

- (b) The following sources will be considered acceptable estimates of market value:
 - 1. An independent appraisal by a professional appraiser licensed by the State of Florida. The appraisal must exclude the value of the land and not use the "income capitalization approach" which bases value on the use of the property, not the structure; or
 - 2. Detailed estimates of the structure's actual cash value, which shall equal the replacement cost for a building, minus depreciation percentage based on the age and condition; or
 - 3. Property appraisals used for tax assessment purposes with an adjustment recommended by the Miami-Dade County Property Appraiser to reflect market conditions (adjusted assessed value.)

- (c) For structures in which the substantial improvement or substantial damage percentage is greater than or equal to 30 percent, a more precise market value may be required by the Floodplain Management Administrator.

Section 3. Repeal of conflicting provisions. Chapter 11C of the Town Code, as made applicable to the Town through Section 8.3 of the Town Charter is repealed in its entirety.

Section 4. Severability. The provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

Section 5. Inclusion In The Code. It is the intention of the Town Council that the provisions of this Ordinance shall become and made a part of the Town of Miami Lakes Code; that the sections of this Ordinance may be renumbered or relettered to accomplish such intentions; and that the word "Ordinance" shall be changed to "Section" or other appropriate word.

Section 6. Effective Date. This Ordinance shall become effective upon adoption on second reading.

The foregoing Ordinance was offered by Councilmember Collins, who moved its adoption on first reading. The motion was seconded by Vice Mayor Alonso and upon being put to a vote, the vote was as follows:

Councilmember Mary Collins	<u>yes</u>
Councilmember Robert Meador, II	<u>yes</u>
Councilmember Michael Pizzi	<u>yes</u>
Councilmember Nancy Simon	<u>yes</u>
Councilmember Peter Thomson	<u>yes</u>
Vice Mayor Roberto Alonso	<u>yes</u>
Mayor Wayne Slaton	<u>yes</u>

PASSED on first reading this 8th day of February, 2005.

The foregoing Ordinance was offered by Councilmember Collins, who moved its adoption on second reading. The motion was seconded by Councilmember Thomson, and upon being put to a vote, the vote was as follows:

Councilmember Mary Collins	<u>yes</u>
Councilmember Robert Meador, II	<u>yes</u>
Councilmember Michael Pizzi	<u>yes</u>
Councilmember Nancy Simon	<u>yes</u>
Councilmember Peter Thomson	<u>yes</u>
Vice Mayor Roberto Alonso	<u>yes</u>
Mayor Wayne Slaton	<u>yes</u>

PASSED AND ADOPTED on second reading this 8th day of March, 2005.

Wayne Slaton
Wayne Slaton
MAYOR

ATTEST:

Debra L. Eastman
TOWN CLERK

APPROVED AS TO FORM AND LEGAL SUFFICIENCY
FOR THE SOLE USE OF THE TOWN OF MIAMI LAKES:

[Signature]
Weiss, Serota, Helfman, Pastoriza,
Guedes, Cole & Boniske, P.A.
TOWN ATTORNEY