

**Land Development Code Text Amendment**  
**File 2025-072**

Monroe County is proposing amendments to the Monroe County Land Development Code to Chapter 122 *Floodplain Management*. The purpose of the proposed amendments is multifaceted and includes, but not limited to, the following:

- to eliminate the size restriction of enclosed areas below elevated buildings to 299 square feet,
- to eliminate the required inspections of enclosed areas below elevated residential structures prior to the transfer of ownership; and
- to eliminate the floodplain certificate of compliance program.

**Land Development Code  
Amendment to amend Sections 122-  
11, 122-15, 122-16, 122-17, 122-18,  
122-19, 122-20, 122-21 and 122-25 of  
the Monroe County Land  
Development Code to eliminate the  
size restriction of enclosed areas  
below elevated buildings to 299  
square feet, the required inspections  
of enclosed areas below elevated  
residential structures prior to the  
transfer of ownership, the floodplain  
certificate of compliance program.**

**Community Meeting: May 20, 2025**

**Land Development Code Text Amendment  
File 2025-072**

Sec. 122-11. Permits.

- (a) **Permits required.** Any owner or owner's authorized agent (hereinafter "applicant") who intends to undertake any development activity within the scope of this chapter, including buildings, structures and facilities exempt from the Florida Building Code, which is wholly within or partially within any flood hazard area shall first make application to the floodplain administrator, and the building official if applicable, and shall obtain all the required floodplain development orders or permits. No such order or permit shall be issued until compliance with the requirements of this chapter and all other applicable codes and regulations has been satisfied.
- (b) **Floodplain development orders or permits.** Floodplain development orders or permits shall be issued pursuant to this chapter for any development activities not subject to the requirements of the Florida Building Code, including buildings, structures and facilities exempt from the Florida Building Code. Depending on the nature and extent of proposed development that includes a building or structure, the floodplain administrator may determine that a floodplain development order is required in addition to a building permit.
- (c) **Buildings, structures and facilities exempt from the Florida Building Code.** Pursuant to the requirements of federal regulations for participation in the National Flood Insurance Program (44 C.F.R. Sections 59 and 60), floodplain development orders or permits shall be required for the following buildings, structures and facilities that are exempt from the Florida Building Code and any further exemptions provided by law, which are subject to the requirements of this chapter:
- (1) Railroads and ancillary facilities associated with the railroad.
  - (2) Nonresidential farm buildings on farms, as provided in F.S. § 604.50.
  - (3) Temporary buildings or sheds used exclusively for construction purposes.
  - (4) Mobile or modular structures used as temporary offices.
  - (5) Those structures or facilities of electric utilities, as defined in F.S. § 366.02, which are directly involved in the generation, transmission, or distribution of electricity.
  - (6) Chickees constructed by the Miccosukee Tribe of Indians of Florida or the Seminole Tribe of Florida. As used in this paragraph, the term "chickee" means an open-sided wooden hut that has a thatched roof of palm or palmetto or other traditional materials, and that does not incorporate any electrical, plumbing, or other non-wood features.
  - (7) Family mausoleums not exceeding 250 square feet in area which are prefabricated and assembled on site or preassembled and delivered on site and have walls, roofs, and a floor constructed of granite, marble, or reinforced concrete.
  - (8) Temporary housing provided by the Department of Corrections to any prisoner in the state correctional system.
  - (9) Structures identified in F.S. § 553.73(10)(k) are not exempt from the Florida Building Code, if such structures are located in flood hazard areas established on flood insurance rate maps.
- (d) Application for a floodplain development order or permit. To obtain a floodplain development order or permit the applicant shall first file an application in writing on a form approved by the building official and furnished by the Building Department. The information provided by the applicant shall accurately, at a minimum:
- (1) Identify and describe the scope of work and development to be covered by the order or permit.
  - (2) Describe the land on which the proposed development is to be conducted by complete legal description, street address or similar description that will readily identify and definitively locate the site.
  - (3) Indicate the use and occupancy for which the proposed development is intended.

- (4) Be accompanied by a site plan or construction documents as specified in Section 122-13 of this chapter.
  - (5) State the valuation of the proposed work.
  - (6) Be signed by the applicant or by the applicant's authorized agent.
  - (7) Give such other data and information as required by the floodplain administrator.
  - (8) For projects proposing to enclose areas under elevated buildings, include signed nonconversion agreement; the agreement shall be recorded on the property deed prior to issuance of the certificate of occupancy.
- (e) **Validity of floodplain development order or permit.** The issuance of a floodplain development order or permit pursuant to this chapter shall not be construed to be a permit for, or approval of, any violation of this chapter, the Florida Building Code, or any other ordinance, resolution or regulation of Monroe County. The issuance of permits based on submitted applications, construction documents, and information shall not prevent the floodplain administrator from requiring the correction of errors and omissions, or in the case of incomplete documents or information, from requiring the supplementation of such prior submitted documents or information with additional documentation or information.
- (f) **Expiration.** A floodplain development order or permit shall automatically become invalid by operation of law unless the work authorized by such permit is commenced within 180 days after its issuance, or if the work authorized is suspended or abandoned for a period of 180 days after the work authorized by such permit commences. Extensions for periods of not more than 180 days each shall be requested in writing by the applicant and justifiable good cause shall be demonstrated. "Good cause" means a "legally sufficient reason."
- (g) **Suspension or revocation.** The floodplain administrator is authorized to suspend or revoke a floodplain development order or permit if the order or permit was issued in error, if the order or permit was issued on the basis of incorrect, inaccurate or incomplete information, if the county Building Department determines that the application for such order or permit contained false or misleading information or omitted information material and relevant to the county's decision to issue said order or permit, if the application for such order or permit failed to comply with a provision or requirement of this chapter, or if the order or permit was issued in violation of this chapter or any other ordinance, resolution, regulation or requirement of Monroe County.
- (h) **Other permits required.** Floodplain development permits and building permits shall include a condition that all other applicable state or federal approvals and permits must be obtained before commencement of the county-permitted development, including but not limited to the following:
- (1) The South Florida Water Management District; pursuant to F.S. § 373.036.
  - (2) Florida Department of Health for onsite sewage treatment and disposal systems; pursuant to F.S. § 381.0065 and Chapter 64E-6, F.A.C.
  - (3) Florida Department of Environmental Protection for activities subject to the joint coastal permit; pursuant to F.S. § 161.055.
  - (4) Florida Department of Environmental Protection for activities that affect wetlands and alter surface water flows, in conjunction with the U.S. Army Corps of Engineers; pursuant to Section 404 of the Clean Water Act.
  - (5) Federal permits and approvals.
- (i) **Other documentation required.** A nonconversion agreement signed by the applicant, and plans or drawings specified by the floodplain administrator, shall be recorded on the property deed prior to issuance of certificates of occupancy or certificates of compliance for the following:
- (1) Enclosed areas below new and substantially improved elevated buildings.
  - (2) Enclosed areas below lateral additions.

- (3) Enclosed areas below nonconforming buildings that are brought into compliance.
- (4) Garages and detached accessory structures that are approved in accordance with the non-elevation requirements of Section 122-25(~~dc~~) and (~~ed~~).

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~~**Sec. 122-15. Required inspections of enclosed areas below elevated residential structures.**~~

- ~~(a) **Applicability.** Prior to the transfer of ownership of any property occupied by an elevated residential structure with a below base flood enclosed area for which construction of the enclosed commenced on or after June 15, 1973, a county approved inspection of the below base flood enclosure shall be conducted. No earlier than 180 days prior to the transfer of the property, the seller or the prospective purchaser, with the seller's permission, shall have the required inspection conducted. The intent of this inspection, which is strictly limited to inspection of below base flood enclosures, is to identify for county records and purchasers any nonconformities or illegal structures or uses.~~
- ~~(b) **Inspections.** Upon inspection request, the inspection required under this section shall be conducted by an inspector from the Building Department. Fees for inspections conducted by the Building Department shall be in accordance with the schedule established by resolution of the BOCC for inspections conducted under the county's flood insurance inspection and compliance program.~~
- ~~(c) **Inspection procedures and forms.** All inspections required under this section shall be conducted in accordance with procedures and recorded on county forms approved by the floodplain administrator.~~
- ~~(d) **Inspection submittal requirements.** The original inspection report, signed by the county inspector, shall be maintained by the Building Department and a copy shall be submitted to the seller, who has contacted the county, as provided above, and the purchaser, provided that the purchaser has contacted the county as provided above no later than ten days prior to the closing date for transfer of the subject property.~~
- ~~(e) **Failure to comply with inspection submittal requirements.** Should the inspection required by this section not be completed, the seller and purchaser, if known, will be notified that the structure is in violation of this section. The purchaser and his or her successors and assigns may enforce the terms of this section in law or at equity. The purchaser may seek injunctive relief against the seller in a court of competent jurisdiction to prevent a violation of or otherwise in connection with a violation of this section. Attorney's fees and costs incurred in an action to enforce these regulations may be awarded to a substantially prevailing party at the discretion of the court. A purchaser may seek and the court may award treble damages as an aggrieved party. The sole intent of this inspection is to provide information for recording and monitoring improvements to below base flood enclosures subject to the county's floodplain regulations and in accordance with Monroe County Board of County Commission Resolution 440-2011, which does not require that the property be brought into compliance prior to or subsequent to transfer. The purpose of this inspection is not to identify other types of unpermitted improvements that are unrelated to the floodplain regulations in this chapter.~~
- ~~(f) Nothing in this section shall prohibit the county from prosecuting illegal, unpermitted improvements under the Pilot Inspection Program (under previous 44 CFR 59.30, repealed on July 5, 2018—FEMA terminated this program on June 28, 2013).~~
- ~~(g) If the results of the inspection identify illegal unpermitted improvements, the requirements of the Florida Building Code applicable to enclosed areas below elevated buildings shall apply when a building permit is sought by an applicant.~~

~~(Ord. No. 026-2022, § 2, 11-15-2022)~~

**~~Sec. 122-16. Floodplain Certificate of Compliance Program.~~**

~~(a) **Generally.** Any property owner is eligible to obtain a certificate of compliance if they have obtained an inspection of an enclosure below base flood elevation by one of the following:~~

- ~~(1) FEMA Insurance Inspection Program; or~~
- ~~(2) Inspection at time of sale; or~~
- ~~(3) Voluntary inspection.~~

~~The below base flood enclosure must have been found in compliance with the Monroe County floodplain regulations by Monroe County staff. Prior to obtaining the certificate, the owner must record a nonconversion agreement in the Monroe County official land records on a form to be provided by the county and approved by the floodplain administrator. Properties that have received their inspections prior to implementation of the certificate of compliance program may receive a certificate of compliance; however, a re-inspection (with no fee) shall be necessary to ensure compliance has been maintained and the owner must also record the nonconversion agreement, which must be recorded in the official records of Monroe County.~~

~~(b) **Outreach.** Every two (2) years, the county will mail written notices to property owners, of which the county is aware own a building or structure with below base flood elevation living areas as follows:~~

- ~~(1) The county will obtain data from the Monroe County Property Appraiser Office which will identify all single family residences which contain enclosures that are identified as living area on the ground floor. Once this data is captured, county technical staff will deduct all the parcels that have already received inspections through the FEMA Insurance Inspection Pilot Program, transfer of ownership program, or through the previously applicable inspection on building permit program, and been made compliant.~~
- ~~(2) The remaining property owners will be notified by regular mail that in order to receive a certificate of compliance, a county inspection is required of any below base flood elevation structures, to verify compliance with the Monroe County floodplain regulations. Owners will also be notified that noncompliant structures may be subject to code compliance proceedings.~~
- ~~(3) If owners seek and obtain a certificate of compliance inspection, and the below base flood enclosures are determined by the county to be compliant, the owners will receive a certificate of compliance as outlined in this section. This is a proactive opportunity for property owners to receive evidence that they have a compliant structure which should, long term, create a positive real property market condition. If an owner has a noncompliant structure, he or she will be notified of all the required corrective actions necessary for the enclosure to become compliant and that county permits or approvals are required to authorize lawful construction and/or development.~~

~~(c) **Inspections.** Inspections may be requested for a certificate of compliance according to this section or Section 122-15 for required inspections of residential structures prior to transfer of ownership.~~

~~(d) **Compliant structures.** The county will provide a certificate of compliance to property owners with compliant below base flood enclosures after such property owners sign and record a nonconversion agreement (with a corresponding drawing or site plan demonstrating the permitted improvements allowed below base flood elevation attached to the agreement) in the official records of Monroe County. The nonconversion agreement shall be recorded in the official records of Monroe County so that future purchasers of properties understand what has been approved by the county for areas below base flood elevation. Property owners shall pay applicable recording fees.~~

~~(e) **Noncompliant structures.** The county building official shall refer any noncompliant structures to the Code Compliance Department for enforcement through appropriate processes. Once compliance is achieved, if the below base flood enclosure has not been completely removed, a nonconversion agreement executed by the owner shall be recorded in the official records of Monroe County.~~

~~(f) **New construction.** Owners of new construction that contains any type of below base flood enclosure, will be required to record a nonconversion agreement in the official records of Monroe County indicating the square footage permitted to be constructed below base flood elevations, with an accurate corresponding drawing or site plan showing/demonstrating the permitted improvements permitted, prior to receiving a certificate of occupancy.~~

~~(Ord. No. 026-2022, § 2, 11-15-2022)~~

## **Sec. 122-~~1715~~. Variances.**

- (a) **Authority.** The Division of Administrative Hearings (DOAH) shall hear and decide on requests for variances from the application of the allegedly strict letter of this chapter. Pursuant to F.S. § 553.73(5), the DOAH shall hear and decide on requests for variances from the application of the allegedly strict letter of the flood resistant construction requirements of the Florida Building Code. DOAH shall also hear and decide on requests for variances for at-grade wet floodproofed accessory structures in A/AE zones that are larger than 600 square feet but not larger than 1,000 square feet in size.
- (b) **Variance procedures.**
- (1) An application for a variance from the provisions of this chapter for development in an area of special flood hazard shall be filed with the Building Department at the time of application for a building permit or floodplain development permit/order which seeks approval of development that is not authorized under the allegedly strict letter of this chapter or flood-resistant construction requirements of the Florida Building Code.
  - (2) Within ten (10) days of receipt of a complete and properly and timely filed application for a variance from the allegedly strict letter of this chapter or of the flood-resistant construction requirements of the Florida Building Code, the floodplain administrator and the Building Official shall review the application, and submit a report and recommendation to the DOAH. The variance applicant may file a written objection to the report and recommendation within 30 calendar days of the date of filing of the report and recommendation.
  - (3) The DOAH shall review the application and the reports and recommendations of the floodplain administrator and the building official and may consider granting the application for variance in accordance with this section.
  - (4) In resolving a variance application under this section, county building, planning and environmental resources, and Code Compliance Department administrative staff interpretations of the Monroe County Codes, of the Florida Building Code, and of applicable federal laws, rules, and regulations, are legally entitled to deference and great weight, and such administrative interpretations should not be modified or overturned unless clearly erroneous. If such administrative staff interpretation is within the range of possible and reasonable interpretations, it is not clearly erroneous and should be affirmed.
- (c) **Limitations on authority to grant variances.**
- (1) The DOAH shall base its decisions on variances on technical justifications submitted by applicants, the considerations for issuance in Section 122-~~1715~~(e) of this chapter, the conditions of issuance set forth in Section 122-~~1715~~ (g) of this chapter, and the reports and recommendations of the floodplain administrator and the building official. Variances for accessory structures in A/AE zones shall be subject to the conditions in Section 112-~~1715~~ (f).
  - (2) When the DOAH considers the propriety of granting a variance, the following factors shall not be considered material or relevant to the hearing officer's decision:
    - a. The physical disabilities or handicaps and health of the applicant or members of his family;
    - b. The domestic difficulties of the applicant or members of his or her family;
    - c. The financial difficulty of the applicant in complying with the floodplain management provisions of this chapter or the Florida Building Code;
    - d. The elevation of surrounding structures or buildings;
    - e. The alleged difficulty of marketing, advertising, or selling the property, building, or structure;
    - f. Any alleged difficulty related to a codified law, rule, regulation, or matter of record, which the applicant or members of his or her family, which he, she, or they were on actual or constructive

- notice of prior to acquiring the property, and could therefore have been avoided, or which may be characterized as a self-created hardship; or
- g. Non-unique or non-peculiar characteristics of the applicant's property, building, or structure.
- (3) The DOAH has the right to attach such conditions as it deems necessary to further the purposes, intent, goals, and objectives of this chapter.
- (d) **Functionally dependent uses.** A variance is authorized to be issued for the construction or substantial improvement necessary for the conduct of a functionally dependent use, as defined in this chapter, provided the variance is the minimum necessary considering the flood hazard and all due consideration has been given to use of methods and materials that minimize flood damage during occurrence of the base flood.
- (e) **Considerations for issuance of variances.** In reviewing requests for variances, the DOAH shall consider all technical evaluations, all relevant factors, all other applicable provisions of the Florida Building Code, this chapter, and the following:
- (1) The danger that materials and/or debris may be swept onto other lands resulting in additional or further injury, harm or damage;
  - (2) The danger to life and/or property due to flooding or erosion damage;
  - (3) The susceptibility of the proposed development, including foreseeable contents thereof, to flood injuries, harm, or damage and their effects on current and future owners or occupants;
  - (4) The importance of the services provided by the proposed development to the community;
  - (5) The availability of alternate locations for the proposed development that are either not subject to flooding or erosion damage, for the proposed use, and the availability of alternate locations for the proposed development which are subject to lower risk of flooding or erosion;
  - (6) The compatibility of the proposed development with existing and anticipated development, public services, and infrastructure;
  - (7) The relationship of the proposed development to the comprehensive plan and floodplain management program for the area;
  - (8) The safety of access to the property in times of flooding for ordinary and emergency and first-responder vehicles;
  - (9) The expected heights, velocity, duration, rate of rise and debris and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site;
  - (10) The costs of providing governmental services during and after flood conditions, including but limited to, debris removal and maintenance and repair of public utilities and facilities such as (including but limited to) sewer, gas, electrical and water systems, streets and bridges;
  - (11) Whether granting the variance will result in increased public expenses, create a threat to public health and safety, create a public nuisance, or cause fraud or victimization of the public; and
  - (12) Whether granting the variance will grant the applicant a special privilege denied to another property owner.
- (f) **Conditions for issuance of a variance for accessory structures in A/AE zones.** Variances shall be issued only upon:
- (1) Submission by the applicant, providing a legally sufficient description of the exceptional hardship that the applicant would incur if a variance were not granted;
  - (2) Determination by the DOAH that the structure meets the definition of accessory structure, for floodplain management purposes, and is used only for parking or storage and:
    - a. The request is for the construction or substantial improvement of an at-grade wet floodproofed accessory structures that is larger than 600 square feet but not larger than 1,000 square feet in size.
    - b. Represents minimal investment and has low damage potential.
    - c. Are one story and have flood openings in accordance with Section R322.2 of the Florida Building Code, Residential.
    - d. Are anchored to resist flotation, collapse or lateral movement resulting from flood loads.
    - e. Have flood damage-resistant materials used below the base flood elevation plus one (1) foot.
    - f. Have mechanical, plumbing and electrical systems, including plumbing fixtures, elevated to or above the base flood elevation plus one (1) foot.
- (g) **Conditions for issuance of other variances.** Variances shall be issued only upon:

- (1) Submission by the applicant, of a showing of legally sufficient good cause that the unique characteristics of the size, configuration, or topography of the site limit compliance with any provision of this chapter or the required elevation standards;
  - (2) Determination by the DOAH that:
    - a. Failure to grant the requested variance would result in exceptional non-self-imposed hardship due to the physical characteristics of the land that render the lot undevelopable; increased costs to satisfy the requirements or inconvenience do not constitute hardship;
    - b. The granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, nor create nuisances, cause fraud on or victimization of the public or conflict with existing local laws and ordinances;
    - c. The variance is the minimum necessary, considering the flood hazard, to afford relief;
    - d. The granting of the requested variance will not result in worsening the expected heights, velocity, duration, rate of rise, and debris and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site;
    - e. The granting of the requested variance will not result in increased risk of dangers enumerated under Section 122-~~4715~~ (e)(1)—(3);
    - f. The granting of the requested variance will not result in increased risk of injuries, harm, or damage enumerated under Section 122-~~4715~~ (e)(8)—(11);
    - g. The granting of the requested variance will not result in increased public expenses, create a threat to public health and safety, create a public nuisance, or cause fraud or victimization of the public;
    - h. The granting of the requested variance will not adversely affect the public service, infrastructure, and public policy considerations enumerated under Section 122-~~4715~~(e)(6).
  - (3) Receipt of a sworn or attested and notarized statement by the applicant that the variance, if granted, shall be recorded in the Office of the Monroe County Clerk of the Court in such a manner that it appears in the chain of title of the affected parcel of land; and
  - (4) If the request is for a variance to allow construction of the lowest floor of a new building, or substantial improvement of a building, below the required elevation, a copy in the record of a written notice from the floodplain administrator to the applicant for the variance, specifying the difference between the base flood elevation and the proposed elevation of the lowest floor, stating that the cost of federal flood insurance will be commensurate with the increased risk resulting from the reduced floor elevation (up to amounts as high as \$25.00 for \$100.00 of insurance coverage), and stating that construction below the base flood elevation increases risks to life and property.
- (g) **Appeal.** An appeal of a variance determination may be submitted pursuant to Section 122-~~1916~~. The failure to timely and properly file an appeal under this section shall constitute an irrevocable jurisdictional waiver of any rights to seek such a variance, for failure to exhaust available administrative remedies.
- (Ord. No. 026-2022, § 2, 11-15-2022)

### **Sec. 122-~~1916~~. Appeals.**

- (a) **Authority.** The Division of Administrative Hearings (DOAH) shall have the authority to hear and decide appeals from final administrative actions regarding the floodplain management provisions of this Land Development Code and the Florida Building Code. The BOCC retains the authority to, in its exclusive discretion, appoint a hearing officer who does not work for DOAH.
- (b) **Standard of review.** An appeal under this section shall be considered an appeal to an administrative tribunal and shall not be a hearing de novo but shall be limited to appellate review of the record created before the building official in his or her capacity as the Monroe County floodplain administrator and as more fully set forth at subsection (e)(2) of this section. The appellant shall be required to demonstrate that the building official's final administrative decision is clearly erroneous, based upon clearly convincing record evidence (i.e., clear and convincing standard of review). In resolving an appeal under this section, Monroe County building, planning and environmental resources, and Code Compliance Department staff interpretations of the Monroe County Comprehensive Plan, Monroe County ordinances, resolutions, and of the Monroe County

Code(s), are legally entitled to deference, and shall not be overturned as long as said interpretation or application is in the range of permissible interpretations or applications.

- (c) **Initiation.** A notice of appeal (appeal) may be initiated by a real property owner who has received a final, written administrative decision from the Monroe County Building Official in his or her capacity as the Monroe County Floodplain Administrator regarding the floodplain management provisions of this Land Development Code, or by a non-governmental natural or legal person who as a result of a final administrative decision of the Monroe County Building Official in his or her capacity as the Monroe County Floodplain Administrator regarding the floodplain management provisions of this Land Development Code has suffered or will resultantly suffer a special injury differing in kind from that suffered by the community at large. For justiciability or standing purposes, the only interests covered by special injuries under this section are interests expressly protected by the Monroe County Comprehensive Plan or health and safety interests. It shall be legally insufficient for justiciability or standing purposes for an appellant to allege a special injury that is only different in degree from the community at large and that is not different in kind from the community at large. Further, for justiciability or standing purposes, an alleged special injury must exceed in degree the general interest in a community good. For example, take the following two non-exhaustive scenarios: A party's claim that a decision regarding the floodplain management provisions of this Code adversely affects his, her, or its interest in preserving property value(s) shall not be justiciable, and a party's claim that a decision regarding the floodplain management provisions of this Code adversely affects his, her, or its interest in environmental or natural resource protection shall not be justiciable.
- (d) **Procedures.** A notice of appeal in the form prescribed and approved by the building official and floodplain administrator must be filed with both the county administrator and with the Building Department within 30 calendar days of the final administrative action. Failure to file such appeal with both the county administrator and the Building Department within 30 calendar days of the final administrative action shall constitute a waiver of any rights under this section to appeal final administrative actions regarding the floodplain management provisions of this Land Development Code. Such waiver shall also constitute a waiver of any rights to appeal a separate but related decision of the building official or planning director on the basis of the building official's separate but related final administrative decision that was never properly and timely appealed under this section.
- (1) The notice of appeal must be notarized and must include the names and addresses of the appellant(s), development permit applicant(s) forming a party to the appeal, the number associated with each development permit forming a subject of the appeal, and the names of all owners of real property located adjacent or contiguous to the parcel of real property to which the appealed final administrative decision principally relates.
  - (2) Upon receipt of a notice of appeal, the county shall deem it complete, and properly and timely filed, or shall deem it improperly or untimely filed, or incomplete. The county shall within 15 working days notify an Appellant if its notice of appeal is untimely or improperly filed or is incomplete. No further action shall be taken on the notice of appeal application unless the deficiencies are remedied. An untimely, improperly filed, or incomplete notice of appeal shall not constitute a valid, legally effective, or legally cognizable notice of appeal under this section, and in no event shall the 30-day jurisdictional period to file a notice of appeal under this section be tolled during any period in which a notice of appeal has been deemed improperly filed or incomplete. Any days following the issuance of the final administrative decision and the filing of a notice of appeal that the county later notifies the applicant is incomplete or improperly filed, shall be subtracted from the 30-day period by which an appellant must file a complete notice of appeal. For example, take the following non-exhaustive scenario: The final administrative decision is issued on Wednesday, January 1, 2020, the appellant files an incomplete notice of appeal on Wednesday, January 22, 2020, and the county notifies the appellant that the notice of appeal is incomplete on Monday, January 27, 2020. Between January 1st and January 22nd, the appellant has consumed 21 of its 30 calendar days to file a timely and complete notice of appeal; the days required by the county to notify the appellant of the notice of appeal's incompleteness shall not be counted against the 30-day period by which the appellant must properly file a complete notice of appeal. As of January 27th (the date of the County's notification to the appellant that the notice of appeal is incomplete) the appellant shall have nine days remaining (until February 5, 2020) to properly

- file a complete notice of appeal. If the appellant does not properly file a complete notice of appeal by February 5th, it would constitute a waiver of any rights to appeal under this section.
- (3) If the county determines the notice of appeal is complete, and properly and timely filed, it shall notify the appellant(s), and, at the appellant's expense, notify the development permit applicant(s) and the owners of real property located adjacent and contiguous to the parcel of real property to which the challenged administrative decision principally relates. Once the county determines that a notice of appeal has been properly and timely filed, and is complete, the county shall refer the appeal to DOAH with a request that an administrative law judge ("hearing officer") be assigned to conduct an appeal hearing. The request shall be accompanied by a copy of the petition and a copy of the notice of county action. The notice of appeal will be forwarded to the BOCC.
- (e) **Effect of filing an appeal.**
- (1) *Stay.* The filing of a notice of appeal shall stay all permit activity and any proceedings in furtherance of the administrative decision appealed unless the building official certifies in writing to the assigned hearing officer, with a copy to the appellant(s) and development applicant(s) forming a party to the appeal, that a stay poses an imminent peril to life, safety, health or property, in which case the appeal shall not stay further permit activity or proceedings in furtherance of the administrative decision appealed. The hearing officer may, upon proper and timely motion, review such certification.
- (2) *The record.* The appellant's, and the appellant-as-applicant's, record shall close upon the date of the final administrative decision from the building official in his or her capacity as the Monroe County Floodplain Administrator. The county shall have 70 calendar days from the date the appellant's notice of appeal is deemed properly and timely filed, completed, and complete, in which to serve all parties and file with DOAH all staff reports and materials the final administrative decision relies upon.
- (f) **Briefs.** Briefs shall be typed or printed pursuant to the same rules for appellate briefs set forth in the Florida Rules of Appellate Procedure. The appellant(s) initial brief shall be served upon the attorney of record for Monroe County and filed with DOAH within 30 calendar days of notification of acceptance of such notarized notice of appeal. The answer brief shall be served upon appellant(s) and filed with DOAH within 30 calendar days of the filing and service of the initial brief. A reply brief must be served upon the attorney of record for Monroe County and filed with DOAH within 15 days of the filing and service of the answer brief.
- (1) All filed briefs shall contain the following:
- a. The style of the appeal;
  - b. The case number, if any;
  - c. The name of the party on whose behalf the brief is filed;
  - d. The name, address, e-mail address, and telephone number of the person filing the brief;
  - e. The electronic or non-electronic signature of the person filing the brief; and
  - f. A certificate of service that copies have been furnished to all other parties to the appeal.
- (2) All initial briefs shall contain the following:
- a. A statement of all disputed issues of material fact. If there are none, the initial brief must so indicate;
  - b. A concise statement of the ultimate facts alleged, including the specific facts the appellant contends warrant reversal of the building official's final administrative action; and
  - c. An exhaustive statement of all specific local Code sections, ordinances, state statutes, or administrative rules the appellant contends require reversal of the building official's final administrative action, including an explanation of how the alleged facts relate to said Code sections, ordinances, state statutes, or administrative rules.
- (g) **Judicial notice.** A hearing officer shall take judicial notice of any matter set forth below when a party properly motions for it and gives each adverse party timely written notice of the request, proof of which is filed with the hearing officer, to enable the adverse party to prepare to meet the request and furnishes the court with sufficient information to enable it to take judicial notice of the matter.
- (1) Specifically identified (by pinpoint citation) duly enacted ordinances and resolutions of the Monroe County Board of County Commissioners.
- (2) Specifically identified (by pinpoint citation) provisions of the Monroe County Code of Ordinances and Monroe County Land Development Code.

- (3) Specifically identified (by pinpoint citation) objectives, policies, and provisions of the Monroe County Comprehensive Plan.
- (4) Specifically identified (by pinpoint citation) provisions in the Florida Building Code.
- (5) Specifically identified (by pinpoint citation) public statutory law and resolutions of the Florida Legislature and the Congress of the United States.
- (6) Specifically identified legislative staff reports and legislative materials prepared in connection with slip laws corresponding to public statutory law of the Florida Legislature and the Congress of the United States.
- (7) Specifically identified (by pinpoint citation) rules or regulations in the Code of Federal Regulations.
- (8) Specifically identified (by pinpoint citation) rules or regulations in the Florida Administrative Code.

Pursuant to the same requirements set forth in this subsection, a hearing officer may take judicial notice of the following matters: Facts that are not subject to dispute because they are capable of accurate and ready determination by resort to sources whose accuracy cannot be questioned.

- (h) **Computing time.** In computing the jurisdictional period of time an appellant must file a notice of appeal under subsection (c) of this section, the day the final administrative decision is issued shall be included. In computing any other period of time under this section, the day of the act from which the period of time begins to run shall not be included. The last day of the period shall be included unless it is a Saturday, Sunday, or legal holiday as that term is defined at Florida Rule of Judicial Administration 2.514(a)(6), in which event the period continues to run until the next day that is not a Saturday, Sunday, or legal holiday as that term is defined at Florida Rule of Judicial Administration 2.514(a)(6).
- (i) **Service and hearing.** The hearing officer shall set the time and place for the appeal hearing and shall serve written notice on all parties at their electronic address of record. If an unrepresented party has no electronic address of record, such written notice shall be sent to the party's street address of record. The hearing officer before whom an appeal is pending may issue any orders necessary to prevent delay, and to promote the just, speedy, and inexpensive determination of all aspects of the appeal.
- (j) **Post-hearing submittals.** Upon request of the hearing officer, parties may submit written proposed final orders within a time designated by the hearing officer.
- (k) **Discovery.** No discovery shall be taken in an appeal under this section. No subpoenas may be issued for documents or witnesses under this section. No testimony shall be taken in an appeal under this section. An argument, issue, or ground for relief not raised in an initial brief is deemed abandoned and waived and may not be raised for the first time in a reply brief.

(Ord. No. 026-2022, § 2, 11-15-2022)

### **Sec. 122-~~2017~~. Violations.**

- (a) **Violations.** Any development that is not within the scope of the Florida Building Code but that is regulated by this chapter which is performed without an issued county permit, that is non-compliant or in conflict with an issued permit, or that does not strictly and fully comply with this chapter, constitutes a violation of this chapter. A building or structure without competent documentation of the elevation of the lowest floor (FEMA elevation certificate), other required design certifications, or other competent substantial evidence of compliance required by this chapter or the Florida Building Code constitutes a violation thereof until such time as that documentation is provided. It being that violation of this chapter providing for floodplain regulations presents a serious threat to the public health, safety, and welfare, a violation of this chapter is and shall be held to be irreparable or irreversible in nature.
- (b) **Authority.** For development that is not within the scope of the Florida Building Code but that is regulated by this chapter and which is determined to be a violation of this chapter, the floodplain administrator or his or her designee(s) is authorized to serve notices of violation, notices of hearing, cease and desist orders, or stop work orders to persons including but not limited to the owners of the property involved, to the property owner's agent, to tenants, residents, or guests at the property involved, or to the person or persons performing or facilitating the performance of the work. The floodplain administrator or his or her designee(s) is also authorized to serve citations for violations of this chapter, which shall be disposed of in county court. Service under this subsection may be accomplished by hand-delivery or attempted mailing (regular, certified,

or registered), or by a method authorized under Section 8-34 of the Monroe County Code of Ordinances or F.S. § 162.12.

- (c) **Continuing violations.** Any person who continues any work on or use of a property, building, or structure, after having been served with a stop work order or cease and desist order ordering that such work or use must stop or cease and desist, except such work as that person is directed to lawfully perform to remove or remedy a violation or unsafe condition, shall be subject to any and all penalties prescribed by law. If any person or entity is found by an administrative hearing officer, the contractors examining board, or a court of competent jurisdiction, to have violated this chapter by continuing to perform such work subsequent to the issuance of a stop work order (red tag), the contractors examining board may take such action as it deems necessary and proper to cease such activity, including but not limited to suspension of the permit pulling privileges of any contractor performing such work. Any person who continues any work on or use of a property, building, or structure after having been served with a notice of hearing or notice of violation which includes a notice that it must be complied with by a specified date and that a fine or other penalties may be imposed, except such work as that person is directed to perform to remove or remedy a violation or unsafe condition, shall be subject to penalties as prescribed by law. A final administrative order finding that a person has violated a cease and desist order previously issued by an administrative tribunal shall constitute prima facie evidence that the county has satisfactorily demonstrated a likelihood of irreparable harm, the unavailability of an adequate remedy at law, a substantial likelihood of success on the merits of the claim at issue in connection with the violation(s) for which the cease and desist order was issued by said tribunal, and consideration(s) of the public interest. A final administrative order finding that a person has violated a cease and desist order previously issued by an administrative tribunal shall constitute prima facie evidence of indirect contempt cognizable and enforceable by a court of competent jurisdiction, including but not limited to by sanctions and contempt order.
- (d) **Joint and several liability.** All owners, part owners, joint owners, tenants in common, tenants in partnership, tenants by the entirety, lessees, sub-lessees, assignees, sub-assignees, and holders of legal or beneficial title to or interest in a parcel of real property, building, or structure held in violation of this chapter, shall be jointly and severally liable with respect to any legal or equitable relief or judgment obtained by the county.
- (e) **Injunctive relief.** The county attorney is authorized to seek affirmative or negative injunctive relief authorizing or commanding compliance with this chapter through, including but not limited to, cessation of a use, or removal of a building or structure or a part or portion thereof, by motion for emergency, preliminary, or permanent injunction, including by ex parte motion, or other forms of equitable relief, from a court of competent jurisdiction, upon presentation of prima facie evidence of a violation of this chapter to such court.
- (f) **Criminal remedy.** Prosecution of violations of this chapter may be prosecuted in the name of the State of Florida by the prosecuting attorney thereof as more fully set forth in F.S. § 125.69(1). Any person found guilty of violating this chapter may be sentenced to up to sixty (60) days in jail or fined in an amount of up to \$500.00 or be subject to both such imprisonment and fines.

(Ord. No. 026-2022, § 2, 11-15-2022)

### **Sec. 122-~~24~~18. Flood hazard warning.**

All agreements for deed, purchase agreements, leases, or other contracts for sale or exchange or transfer of parcels/lots within special flood hazard areas in the unincorporated areas of the county shall carry the following flood hazard warning prominently displayed on such instrument, in at least 12-point boldfaced and regular-faced font and all-caps and lowercase type as follows:

"FLOOD HAZARD WARNING

This property may be subject to flooding. You should contact the county growth management division and obtain the latest information regarding flood elevations and restrictions on development before acquiring and making use of this property."

(Ord. No. 026-2022, § 2, 11-15-2022)

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## ARTICLE III. FLOOD RESISTANT DEVELOPMENT

### Sec. 122-25. Buildings and structures.

- (a) **Design and construction of buildings, structures and facilities exempt from the Florida Building Code.** Pursuant to Section 122-11(c) of this chapter, buildings, structures, and facilities that are exempt from the Florida Building Code, including substantial improvement or repair of substantial damage of such buildings, structures and facilities, shall be designed and constructed in accordance with the flood load and flood resistant construction requirements of ASCE 24. Structures exempt from the Florida Building Code that are not walled and roofed buildings shall comply with the requirements of Section 122-31 of this chapter.
- ~~(b) **Enclosed areas below elevated buildings.** Enclosed areas (enclosures) below elevated buildings shall comply with all the applicable requirements of the Florida Building Code and the following:~~
- ~~(1) **Enclosed areas below new and substantially improved one- and two-family dwellings, and below lateral additions to one- and two-family dwellings:-**~~
- ~~a. **In zone A/AE flood hazard areas, not more than 299 square feet may be permitted to be enclosed by walls of opaque materials, except for perimeter foundations (crawl/underfloor spaces that have a wall height less than 5 feet). Additional area may be enclosed with screening or open lattice. The size limitation shall not apply to areas enclosed for parking of aircraft below residential buildings abutting airport districts.**~~
- ~~b. **In coastal high hazard areas (zone V) and coastal A-zones, not more than 299 square feet may be permitted to be enclosed by breakaway walls of opaque materials. Additional area may be enclosed with screening or open lattice.**~~
- ~~(2) **Nonconforming enclosed areas of 299 square feet or more below one- and two-family dwellings lawfully established and lawfully existing as of April 12, 2004, shall not be modified, improved, or expanded unless the enclosed areas are brought into compliance with the Florida Building Code, Residential Section R322 and this section.**~~
- ~~(3) **Enclosed areas below other new and substantially improved buildings and structures shall comply with the requirements of Florida Building Code, Building and ASCE 24.**~~
- ~~(4) **Applications that include enclosed areas below elevated buildings shall include a nonconversion agreement as specified in Section 122-11(i) of this chapter.**~~
- (eb) **Minimum foundation requirements for buildings and structures within the scope of the Florida Building Code.** Pursuant to the Florida Building Code, and Sections 6-147 and 6-148 of the Monroe County Code of Ordinances, the design of the foundation system for buildings within the scope of the Florida Building Code shall be provided by a geotechnical engineer registered in the State of Florida in a site-specific geotechnical report submitted per requirements of Section 1803.6 of the Florida Building Code. The foundation design shall be the more stringent of recommendations of the report and meet the following minimum requirements:
- (1) All structures or building foundations shall be anchored/socketed into natural rock. This includes, but is not limited to, auger cast concrete piles, precast concrete piles or wooden piles.
  - (2) All concrete piling shall have full depth reinforcing to effectively resist the internal forces induced by the design loads, without failure.
  - (3) All piling shall be anchored to the natural rock with a 14-inch minimum diameter augured socket and a minimum embedment of 3 feet.
  - (4) The pile foundation support system shall be designed to resist the required lateral loading for an unsupported height defined by a full scour condition. The construction documents shall include a

statement that the design has been completed and certified for a full scour condition for lateral stability to the elevation of the supporting rock and in accordance with ASCE 24.

- (5) Pile embedment shall include consideration of decreased resistance capacity caused by scour of soil strata surrounding the piling and have adequate rock penetration to resist the combined wave and wind loads (lateral and uplift).

**(dc) At-grade residential detached accessory structures.** At-grade detached accessory structures are permitted provided the accessory structures are used only for parking or storage and:

- (1) If located in special flood hazard areas (zone A/AE), other than coastal high hazard areas, are one-story and not larger than 600 square feet and have flood openings in accordance with Section R322.2 of the Florida Building Code, Residential.
  - a. A variance, in accordance with Section 122-~~1715~~, may be authorized for the construction or substantial improvement of at-grade detached accessory structures larger than the size limits specified in subsection (1) but not larger than 1,000 square feet in size.
- (2) If located in coastal high hazard areas (zone V/VE and coastal A zones), are not located below elevated buildings and are not larger than 100 square feet.
- (3) Are anchored to resist flotation, collapse or lateral movement resulting from flood loads.
- (4) Have flood damage-resistant materials used below the base flood elevation plus one (1) foot.
- (5) Have mechanical, plumbing and electrical systems, including plumbing fixtures, elevated to or above the base flood elevation plus one (1) foot.
- (6) Applications for detached accessory structures shall include a nonconversion agreement as specified in Section 122-11(i) of this chapter.

**(ed) Nonresidential detached accessory structures.** In all flood hazard areas, nonresidential detached accessory structures shall comply with the requirements of Florida Building Code, Building and ASCE 24, including, but not limited to, elevation or dry floodproofing requirements. Applications for detached accessory structures shall include a nonconversion agreement as specified in Section 122-11(i) of this chapter.

(Ord. No. 026-2022, § 2, 11-15-2022; Ord. No. 020-2023, § 2, 9-20-2023)