

ARTICLE 12 FLOODPLAIN REGULATIONS

SECTION 21-12 FLOODPLAIN REGULATIONS

Section 21-12.01 Statutory authorization.

(a) The Indiana Legislature granted the power to local units of government (IC 36-7-4) to control land use within their jurisdictions in order to accomplish the following.

Section 21-12.02 Statement of purpose.

(a) The purpose of this article is to guide *development* in the *flood* hazard areas in order to reduce the potential for loss of life and property, reduce the potential for health and safety hazards, and to reduce the potential for extraordinary public expenditures for *flood* protection and relief. Under the authority granted to local units of government to control land use within their jurisdiction, which includes taking into account the effects of flooding, the Common Council of the City of South Bend, Indiana, hereby adopts the following *floodplain* management regulations in order to accomplish the following:

- (1) To prevent unwise *developments* from increasing *flood* or drainage hazards to others;
- (2) To protect new *buildings* and major improvements to *buildings* from *flood* damage;
- (3) To protect human life and health from the hazards of flooding;
- (4) To lessen the burden on the taxpayer for *flood* control projects, repairs to *flood* damaged public facilities and utilities, and *flood* rescue and relief operations;
- (5) To maintain property values and a stable tax base by minimizing the potential for creating *flood* blighted areas; and
- (6) To make federally subsidized *flood* insurance available for *structures* and their contents in the City of South Bend, Indiana, by fulfilling the requirements of the National Flood Insurance Program.

Sec. 21-12.03. Definitions.

(a) In addition to the definitions contained in Article 11, Section 21-11 Definitions, the following definitions shall apply to the *floodplain* regulations of the article. (Ord. No. 9513-04)

- (1) Building: see "*structure*."
- (2) Development means any man-made change to improved or unimproved real estate including but not limited to:
 - (A) Construction, reconstruction, or placement of a *building* or any addition to a *building*;
 - (B) Installing a *manufactured home* on a site, preparing a site for a *manufactured home* or installing a *recreational vehicle* on a site for more than one hundred eighty (180) days;
 - (C) Installing utilities, erection of walls and fences, construction of roads, or similar projects;
 - (D) Construction of *flood control structures* such as levees, dikes, dams, channel improvements, etc.;
 - (E) Mining, dredging, filling, grading, excavation, or drilling operations;
 - (F) Construction and/or reconstruction of bridges or culverts;
 - (G) Storage of materials; or
 - (H) Any other activity that might change the direction, height, or velocity of *flood* or surface waters.

"*Development*" does not include activities such as the maintenance of existing *buildings* and facilities such as painting, reroofing; resurfacing roads; or gardening, plowing, and similar agricultural practices that do not involve filling, grading, excavation, or the construction of permanent *buildings*.

- (3) Existing manufactured home park or subdivision means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes 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 the effective date of Ord. No. 9194-01.
- (4) Expansion to an existing manufactured home park or subdivision means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

- (5) FBFM means Flood Boundary and Floodway Map.
- (6) FEMA means Federal Emergency Management Agency.
- (7) FHBM means Flood Hazard Boundary Map.
- (8) FIRM means Flood Insurance Rate Map.
- (9) Flood means a general and temporary condition of partial or complete inundation of normally dry land areas from the overflow, the unusual and rapid accumulation, or the runoff of surface waters from any source.
- (10) Floodplain means the channel proper and the areas adjoining any wetland, lake or watercourse which have been or hereafter may be covered by the *regulatory flood*. The floodplain includes both the *floodway* and the *floodway fringe* districts.
- (11) Flood protection grade (FPG) means the elevation of the *regulatory flood* plus two (2) feet at any given location in the *special flood hazard area (SFHA)*.
- (12) Floodway means the channel of a river or stream and those portions of the floodplains adjoining the channel which are reasonably required to efficiently carry and discharge the peak *flood* flow of the *regulatory flood* of any river or stream.
- (13) Floodway fringe means those portions of the *floodplain* lying outside the *floodway*.
- (14) Letter of map amendment (LOMA) means an amendment to the currently effective *FEMA* map that establishes that a property is not located in a *special flood hazard area (SFHA)*. A LOMA is only issued by *FEMA*.
- (15) Letter of map revision (LOMR) means an official revision to the currently effective *FEMA* map. It is issued by *FEMA* and changes *flood* zones, delineations, and elevations.
- (16) Lowest floor means the lowest of the following:
 - (A) The top of the basement floor;
 - (B) The top of the garage floor, if the garage is the lowest level of the *building*;

- (C) The top of the first floor of *buildings* elevated on pilings or constructed on a crawl space with permanent openings; or
 - (D) The top of the floor level of any enclosure below an elevated *building* where the walls of the enclosure provide any resistance to the flow of *flood* waters unless:
 - i. The walls are designed to automatically equalize the hydrostatic *flood* forces on the walls by allowing for the entry and exit of *flood* waters, by providing a minimum of two (2) openings (in addition to doorways and windows) having a total area of one (1) square foot for every two (2) square feet of enclosed area subject to flooding. The bottom of all such openings shall be no higher than one (1) foot above grade; and
 - ii. Such enclosed space shall be usable for the parking of vehicles and *building* access.
- (17) Manufactured home means a *structure*, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term "manufactured home" does not include a "*recreational vehicle*."
- (18) New manufactured home park or subdivision means a *manufactured home* park or subdivision for which the construction of facilities for servicing the lots on which the *manufactured homes* 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 the effective date of Ord. No. 9194-01.
- (19) Recreational vehicle means a vehicle which is:
- (A) Built on a single chassis;
 - (B) Four hundred (400) square feet or less when measured at the largest horizontal projections;
 - (C) Designed to be self-propelled or permanently towable by a light duty truck; and
 - (D) Designed primarily not for use as a permanent dwelling, but as quarters for recreational camping, travel, or seasonal use.
- (20) Regulatory flood means the *flood* having a one (1) percent probability of being equaled or exceeded in any given year, as calculated by a method and

procedure which is acceptable to and approved by the Indiana Natural Resources Commission and the Federal Emergency Management Agency. The *regulatory flood* elevation at any location is as defined in section 21-182 of this article. The "*regulatory flood*" is also known by the term "base flood."

- (21) Special flood hazard area (SFHA) means those lands within the jurisdiction of the City of South Bend, Indiana that are subject to inundation by the *regulatory flood*. The SFHAs of the City of South Bend, Indiana are generally identified as such on the Flood Insurance Rate Map of the City of South Bend, Indiana prepared by the Federal Emergency Management Agency and dated February 17, 1988. The SFHAs of those parts of unincorporated St. Joseph County that are within the extraterritorial jurisdiction of the City of South Bend or that may be annexed into the City of South Bend are generally identified as such on the Flood Insurance Rate Map prepared for St. Joseph County by the Federal Emergency Management Agency and dated February 17, 1988.
- (22) Structure means a *structure* that is principally above ground and is enclosed by walls and a roof. The term includes a gas or liquid storage tank, a *manufactured home*, or a prefabricated *building*. The term also includes *recreational vehicles* to be installed on a site for more than one hundred eighty (180) days.
- (23) Substantial improvement means any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds fifty (50) percent of the market value of the structure before the start of construction of the improvement. This term includes structures that have incurred substantial damage regardless of the actual repair work performed. The term does not include improvements of *structures* to correct existing violations of State or local health, sanitary, or safety code requirements or any alteration of an "historic structure," provided that the alteration will not preclude the *structures* continued designation as an "historic *structure*."

Sec. 21-12.04 Duties of the Administrator.

The Zoning Administrator for the City of South Bend, Indiana shall implement this article and hereafter be referred to as the Zoning Administrator. The Zoning Administrator for the City of South Bend, Indiana is appointed to review all *development* and subdivision proposals to ensure compliance with this article, including but not limited to the following duties:

- (a) Ensure that all *development* activities within the *special flood hazard areas* of the jurisdiction of the City of South Bend, Indiana meet the requirements of this article.

- (b) Provide information and assistance to citizens upon request about permit procedures and *floodplain* construction techniques.
- (c) Ensure that construction authorization has been granted by the Indiana Natural Resources Commission for all *development* projects subject to section 21-12.07 of this article, and maintain a record of such authorization (either copy of actual permit or letter of recommendation). (Ord. No. 9513-04)
- (d) Maintain a record of the as-built elevation of the top of the *lowest floor* (including basement) of new and/or substantially improved *buildings* constructed in the *special flood hazard areas*. Inspect before, during and after construction.
- (e) Maintain a record of the engineer's certificate and the as-built floodproofed elevation of all *buildings* subject to section 21-12.08 of this article. (Ord. No. 9513-04)
- (f) Cooperate with State and Federal *floodplain* management agencies to improve base *flood* and *floodway* data and to improve the administration of this article. Submit reports as required for the National Flood Insurance Program.
- (g) Maintain for public inspection and furnish upon request *regulatory flood* data, SFHA maps, *letters of map amendment (LOMA)*, *letters of map revision (LOMR)*, copies of DNR permits and letters of recommendation, Federal permit documents, and as-built elevation and floodproofing data for all *building* constructed subject to this article.
- (h) Notify adjacent communities and the State Coordinating Office prior to any alteration or relocation of a watercourse, and submit copies of such notifications to *FEMA*.

Sec. 21-12.05 *Regulatory flood elevation.*

- (a) This article's protection standard is the *regulatory flood*. The best available *regulatory flood* data is listed below. Whenever a party disagrees with the best available data, the party submitting the detailed engineering study needs to replace existing data with better data and submit it to the Department of Natural Resources for review and approval.
- (b) The *regulatory flood* elevation for each *special flood hazard area* delineated as an "AH Zone" or "AO Zone" shall be that elevation or depth delineated on the Flood Insurance Rate Map of the City of South Bend, Indiana.
- (c) The *regulatory flood* elevation for each of the remaining *special flood hazard areas* delineated as an "A Zone" on the Flood Insurance Rate Map of the City of South Bend, Indiana shall be according to the best data available as provided by the Department of Natural Resources.

(d) The *regulatory flood* elevation and *floodway* limits for the *special flood hazard areas* of those parts of unincorporated St. Joseph County that are within the extraterritorial jurisdiction of the City of South Bend, Indiana or that may be annexed into the City of South Bend, Indiana shall be as delineated on the 100-year *flood* profiles in the Flood Insurance Study of St. Joseph County dated February 17, 1988, and the corresponding Flood Boundary and Floodway Maps and Flood Insurance Rate Maps dated February 17, 1988, prepared by the Federal Emergency Management Agency.

(e) If the *special flood hazard area* is delineated as "AH Zone or AO Zone," the elevation or depth will be delineated on the City of South Bend, Indiana Flood Insurance Rate Map. If the SFHA is delineated as "Zone A" on the City of South Bend, Indiana Flood Insurance Rate Map, the *regulatory flood* elevation shall be according to the best data available as provided by the Department of Natural Resources.

(f) The *regulatory flood* elevation and *floodway* limits for the *special flood hazard areas* of the St. Joseph River and Clyde Creek, Bowman Creek, and Juday Creek shall be as delineated on the 100-year *flood* profiles in the Flood Insurance Study of the City of South Bend, Indiana, dated February 17, 1988 and the corresponding Flood Boundary and Floodway Map/Flood Insurance Rate Maps dated February 17, 1988 prepared by the Federal Emergency Management Agency.

Sec. 21-12.06 Improvement location permit.

(a) No person, firm, corporation, or governmental body not exempted by state law shall commence any *development* in the *special flood hazard area* without first obtaining an improvement location permit from the Zoning Administrator. The Zoning Administrator shall not issue an improvement location Permit if the proposed *development* does not meet the requirements of this article.

- (1) The application for an improvement location permit shall be accompanied by the following:
 - (A) A description of the proposed *development*;
 - (B) Location of the proposed *development* sufficient to accurately locate property and *structure* in relation to existing roads and streams;
 - (C) A legal description of the property site;
 - (D) A site *development* plan showing existing and proposed *development* locations and existing and proposed land grades; and
 - (E) Elevation of the top of the *lowest floor* including basement of all proposed *development*. Elevation should be in National Geodetic Vertical Datum of 1929 (NGVD) or North American Vertical Datum (NAVD). In either case the conversion formula should be included.

- (2) Upon receipt of an application for an improvement location permit, the Zoning Administrator shall determine if the site is located within an identified *floodway*, *floodway fringe* or within the *floodplain* where the limits of the *floodway* have not yet been determined.
- (A) If the site is in an identified *floodway* the Zoning Administrator shall require the applicant to forward the application, along with all pertinent plans and specifications, to the Department of Natural Resources and apply for a permit for construction in a *floodway*.
- i. Under the provisions of IC 14-28-1 a permit from the Natural Resources Commission is required prior to the issuance of a local *building* permit for any excavation, deposit, construction or obstruction activity located in the *floodway*. This includes land preparation activities such as filling, grading, clearing and paving etc. undertaken before the actual start of construction of the *building*.
 - ii. No action shall be taken by the Zoning Administrator until a permit has been issued by the Natural Resources Commission granting approval for construction in the *floodway*. Once a permit has been issued by the Natural Resources Commission, the Zoning Administrator may issue the local improvement location permit, provided the provisions contained in sections 21-12.07 and 21-12.08 of this article have been met. The improvement location permit cannot be less restrictive than the permit issued by the Natural Resources Commission. (Ord. No. 9513-04)
- (B) If the site is located in an identified *floodway fringe*, then the Zoning Administrator may issue the local improvement location permit provided the provisions contained in sections 21-12.07 and 21-12.08 of this article have been met. The key provision is that the top of the *lowest floor* of any new or substantially improved *structure* shall be at or above the *flood protection grade (FPG)*. (Ord. No. 9513-04)
- (C) If the site is in an identified *floodplain* where the limits of the *floodway* and *floodway fringe* have not yet been determined, and the drainage area upstream of the site is greater than one (1) square mile, the Zoning Administrator shall require the applicant to forward the application, along with all pertinent plans and specifications, to the Department of Natural Resources for review and comment.
- i. No action shall be taken by the Zoning Administrator until either a permit for construction in the *floodway* or a letter of recommendation citing the 100-year *flood* elevation and the

recommended *flood protection grade* has been received from the Department of Natural Resources.

- ii. Once the Zoning Administrator has received the proper permit or letter of recommendation approving the proposed *development*, an improvement location permit may be issued provided the conditions of the improvement location permit are not less restrictive than the conditions received from Natural Resources and the provisions contained in sections 21-12.07 and 21-12.08 of this article have been met. (Ord. No. 9513-04)

(D) If the site is in an identified *floodplain* where the limits of the *floodway* and *floodway fringe* have not yet been determined and the drainage area upstream of the site is less than one (1) square mile, the Zoning Administrator shall require the applicant to provide an engineering analysis showing the limits of the *floodway*, *floodway fringe* and 100-year elevation for the site.

- i. Upon receipt, the Zoning Administrator may issue the local improvement location permit, provided the provisions contained in sections 21-12.07 and 21-12.08 of this article have been met. (Ord. No. 9513-04)

Sec. 21-12.07 Preventing increased damages.

No *development* in the *special flood hazard area* shall create a damaging or potentially damaging increase in *flood* heights or velocity or threat to public health and safety.

(a) Within the *floodway* identified on the Flood Boundary and Floodway Map, the Flood Insurance Rate Map, or engineering analysis as provided in section 21-12.06(a)(2)d, the following standards shall apply: (Ord. No. 9513-04)

- (1) No *development* shall be allowed which acting alone or in combination with existing or future *development*, will cause any increase in the elevation of the *regulatory flood*; and
- (2) For all projects involving channel modifications or fill, including levees the City of South Bend, Indiana shall submit the data and request that the Federal Emergency Management Agency revise the *regulatory flood* data.

(b) Within all *special flood hazard areas* identified as "Zone A" (no 100-year *flood* elevation and/or *floodway/floodway fringe* delineation has been provided), the following standard shall apply:

- (1) The total cumulative effect of the proposed *development*, when combined with all other existing and anticipated *development*, will not increase the

regulatory flood elevation more than one-tenth (0.1) of one (1) foot and will not increase *flood* damages or potential *flood* damages.

- (c) Public health standards in all *special flood hazard areas*:
- (1) No *development* in the *special flood hazard area* shall include locating or storing chemicals, explosives, buoyant materials, flammable liquids, pollutants, or other hazardous or toxic materials below the *flood protection grade*, unless such materials are stored in a floodproofed storage tank or *building* constructed according to the requirements of section 21-12.08 of this article. (Ord. No. 9513-04)
 - (2) New and replacement sanitary sewer lines and on-site waste disposal systems may be permitted providing all manholes or other aboveground openings are located above the FPG, or those which are located below the FPG are watertight.

Sec. 21-12.08 Protecting *buildings*.

In addition to the damage prevention requirements of section 21-12.07, all *buildings* to be located in the SFHA shall be protected from *flood* damage below the *flood protection grade*. (Ord. No. 9513-04)

- (a) This *building* protection requirement applies to the following situations:
- (1) construction or placement of any new *building* having a floor area greater than four hundred (400) square feet;
 - (2) Structural alterations made to an existing (previously unaltered) *building*, the cost of which equals or exceeds fifty (50) percent of the value of the prealtered *building* (excluding the value of the land);
 - (3) Any previously altered *building*
 - (4) Reconstruction or repairs made to a damaged *building* that are valued at or more than fifty (50) percent of the market value of the *building* (excluding the value of the land) before damage occurred;
 - (5) Installing a *manufactured home* on a new site or a new *manufactured home* on an existing site. This article does not apply to returning the existing *manufactured home* to the same site it lawfully occupied before it was removed to avoid *flood* damage; and
 - (6) Installing a travel trailer or *recreational vehicle* on a site for more than one hundred eighty (180) days.

(b) This *building* protection requirement may be met by one of the following methods. The Zoning Administrator shall maintain a record of compliance with these *building* protection standards as required in section 21-12.04 of this article. (Ord. No. 9513-040)

- (1) A residential or nonresidential *building* may be constructed on a permanent land fill in accordance with the following:
 - (A) The fill shall be placed in layers no greater than one (1) foot deep before compacting to ninety-five (95) percent of the maximum density obtainable with the Standard Proctor Test method.
 - (B) The fill should extend at least ten (10) feet beyond the foundation of the *building* before sloping below the *flood protection grade*.
 - (C) The fill shall be protected against erosion and scour during flooding by vegetative cover, riprap, or bulkheading. If vegetative cover is used, the slopes shall be no steeper than three (3) horizontal to one (1) vertical.
 - (D) The fill shall not adversely affect the flow of surface drainage from or onto neighboring properties.
 - (E) The top of the *lowest floor* including basements, (see definition of *lowest floor* in section 21-12.03 Definitions) shall be at or above the *flood protection grade*. (Ord. No. 9513-04)
- (2) A residential or nonresidential *building* may be elevated in accordance with the following:
 - (A) The *building* or improvements shall be elevated on posts, piers, columns, extended walls, or other types of similar foundation provided:
 - i. Walls of any enclosure below the elevated floor shall be designed to automatically equalize hydrostatic *flood* forces on the walls by allowing for the entry and exit of *flood* waters, through providing a minimum of two (2) openings (in addition to doorways and windows) having a total area of one (1) square foot for every two (2) square feet of enclosed area subject to flooding. The bottom of all such opening shall be no higher than one (1) foot above grade; and
 - ii. Any enclosure below the elevated floor is used for storage of vehicles and *building* access.
 - (B) The foundation and supporting members shall be anchored and aligned in relation to *flood* lows and adjoining *structures* so as to minimize

exposure to known hydrodynamic forces such as buoyancy, current, waves, ice, and floating debris.

(C) All areas below the *flood protection grade* shall be constructed of materials resistant to *flood* damage. The top of the *lowest floor* (including basement) and all electrical, heating, ventilating, plumbing, and air conditioning equipment and utility meters shall be located at or above the *flood protection grade*. Water and sewer pipes, electrical and telephone lines, submersible pumps, and other waterproofed service facilities may be located below the *flood protection grade*.

(3) *Manufactured homes* and *recreational vehicles* to be installed or substantially improved on a site for more than one hundred eighty (180) days must meet one of the following anchoring requirements:

(A) The *manufactured home* shall be elevated on a permanent foundation such that the *lowest floor* shall be at or above the *flood protection grade* and securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement. This requirement applies to all *manufactured homes* to be placed on a site:

i. Outside a *manufactured home* park or subdivision;

ii. In a *new manufactured home park or subdivision*;

iii. In an *expansion to an existing manufactured home park or subdivision*; or

iv. In an *existing manufactured home park or subdivision* on which a *manufactured home* has incurred substantial damage as a result of a *flood*.

(B) This requirement applies to all *manufactured homes* to be placed on a site in an *existing manufactured home park or subdivision* that has not been substantially damaged by a *flood*. The *manufactured home* shall be elevated so that the *lowest floor* of the *manufactured home* chassis is supported by reinforced piers or other foundation elements that are no less than thirty-six (36) inches in height above grade and be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement.

(4) *Recreational vehicles* placed on a site shall either:

(A) Be on the site for less than one hundred eighty (180) consecutive days;

- (B) Be fully licensed and ready for highway use (defined as being on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions); or
 - (C) Meet the requirements for *manufactured homes* in paragraph (3) of this section.
- (5) A nonresidential *building* may be floodproofed to the *flood protection grade* (in lieu of elevating) if done in accordance with the following:
- (A) A Registered Professional Engineer shall certify that the *building* has been designed so that below the *flood protection grade*, the *structure* and attendant utility facilities are watertight and capable of resisting the effects of the *regulatory flood*. The *building* design shall take into account *flood* velocities, duration, rate of rise, hydrostatic pressures, and impacts from debris or ice.
 - (B) Floodproofing measures shall be operable without human intervention and without an outside source of electricity.

Sec. 21-12-09 Other *development* requirements.

(a) The Area Plan Commission shall review all proposed subdivisions to determine whether the subdivision lies in a flood hazard area as defined elsewhere by Code. If the Area Plan Commission finds the subdivision to be so located, the Area Plan Commission shall forward plans and materials to the Indiana Department of Natural Resources for review and comment. The Area Plan Commission shall require appropriate changes and modifications in order to assure that:

- (1) It is consistent with the need to minimize *flood* damages;
- (2) All public utilities and facilities, such as sewer, gas, electrical, and water systems are located and constructed to minimize or eliminate *flood* damage;
- (3) Adequate drainage is provided so as to reduce exposure to *flood* hazards;
- (4) On-site waste disposal systems, if provided, will be so located and designed to avoid impairment of them or contamination from them during the occurrence of the *regulatory flood*.

(b) Developers shall record the 100-year *flood* elevation on all subdivision plats containing lands (identified elsewhere by this article) within a flood hazard area prior to submitting the plats for approval by the Area Plan Commission.

(c) All owners of *manufactured home* or mobile home parks or subdivisions located within the *special flood hazard area* identified as "Zone A" on South Bend's Flood Hazard Boundary Map or Flood Insurance Rate Maps shall develop an evacuation plan for those lots located in the *special flood hazard area* and shall have it filed and approved by the St. Joseph Emergency Management Agency and further file it with the Area Plan Commission.

Sec. 21-12.10 Variances.(a) The Board of Zoning Appeals may consider issuing a variance to the terms and provisions of this article provided the applicant demonstrates that:

- (1) There exists a good and sufficient cause for the requested variance;
- (2) The strict application of the terms of this article will constitute an exceptional hardship to the applicant; and
- (3) The granting of the requested variance will not increase *flood* heights, create additional threats to public safety, cause additional public expense, create nuisances, cause fraud or victimization of the public, or conflict with existing laws or ordinances.

(b) The Board of Zoning Appeals may issue a variance to the terms and provisions of this article subject to the following standards and conditions:

- (1) No variance or exception for a residential use within a *floodway* subject to section 21-12.07 of this article may be granted; (Ord. No. 9513-04)
- (2) Any variance or exception granted in a *floodway* subject to section 21-12.07 of this article will require a permit from Natural Resources; (Ord. No. 9513-04)
- (3) Variances or exceptions to the Building Protection Standards of section 21-12.08 may be granted only when a new *structure* is to be located on a lot of one-half (1/2) acre or less in size, contiguous to and surrounded by lots with existing *structures* constructed below the *flood protection grade*; (Ord. No. 9513-04)
- (4) Variance or exception may be granted for the reconstruction or restoration of any *structure* individually listed on the Register of Historic Places or the Indiana State Survey of Historic Architectural, Archaeological and Cultural Sites, Structures, Districts, and Objects;
- (5) All variances shall give the minimum relief necessary and be such that the maximum practical *flood* protection will be given to the proposed construction; and

- (6) The Board of Zoning Appeals shall issue a written notice to the recipient of a variance or exception that the proposed construction will be subject to increased risks to life and property and could require payment of increased *flood* insurance premiums.

Sec. 21-12.11 Disclaimer of liability.

The degree of *flood* protection required by this article is considered reasonable for regulatory purposes and is based on available information derived from engineering and scientific methods of study. Larger *floods* can and will occur on rare occasions. Therefore, this article does not create any liability on the part of the City of South Bend, Indiana, the Indiana Department of Natural Resources, or the State of Indiana, for any *flood* damage that results from reliance on this article or any administrative decision made lawfully thereunder.

Sec. 21-12.12 Violations.

Failure to obtain an improvement location permit in the *special flood hazard area* or failure to comply with the requirements of a permit or conditions of a variance shall be deemed to be a violation of this article. All violations shall be considered a common nuisance and be treated as such in accordance with the provisions of the Zoning Code for the City of South Bend, Indiana.

- (a) A separate offense shall be deemed to occur for each day the violation continues to exist.
- (b) The Zoning Administrator shall inform the owner that any such violation is considered a willful act to increase *flood* damages and therefore may cause coverage by a Standard Flood Insurance Policy to be suspended.
- (c) Nothing herein shall prevent the City of South Bend, Indiana from taking such other lawful action to prevent or remedy any violations. All costs connected therewith shall accrue to the person or persons responsible.

Sec. 21-12.13 Abrogation and greater restrictions.

This article repeals and replaces other ordinances adopted by the City of South Bend, Indiana to fulfill the requirements of the National Flood Insurance Program. However, this article does not repeal the original resolution or ordinance adopted to achieve eligibility in the Program. Nor does this article repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. Where this article and other ordinance easements, covenants, or deed restrictions conflict or overlap, whichever imposes the more stringent restrictions shall take precedence. In addition, the City of South Bend, Indiana shall assure that all National Flood Insurance Program regulations and laws (310 IAC 6-1-1, IC 14-28-1 and IC 14-28-3) are met.

Sec. 21-191. Separability.

The provisions and sections of this article shall be deemed separable and the invalidity of any portion of this article shall not affect the validity of the remainder.