Sponsored by: Kevin R. Utz, Mayor
Damian Halstad, Council President

ORDINANCE NO. 821

AN ORDINANCE TO REPEAL AND RE-ENACT IN ITS ENTIRETY CHAPTER 83 TITLED "FLOODPLAIN MANAGEMENT" OF THE WESTMINSTER CITY CODE TO CONSIST OF NEW SECTION 831.1 THROUGH AND INCLUDING SECTION 83.10.1; TO PROVIDE REQUIREMENTS FOR FLOODPLAIN MANAGEMENT, TO SET FORTH THE STATUTORY AUTHORIZATION AND PURPOSE OF THE CHAPTER, TO ESTABLISH DEFINITIONS, TO SET FORTH REQUIREMENTS REGARDING APPLICABILITY, VARIANCES, ENFORCEMENT THEREFOR, TO ESTABLISH RECORD-KEEPING REQUIREMENTS AND FEES, AND GENERALLY RELATING THERETO.

Section 1. Be it enacted and ordained by The Mayor and Common Council of Westminster that the existing Chapter 83 of the Westminster City Code titled "Floodplain Management" be and the same is hereby repealed in its entirety and said Chapter 83 be and the same is hereby re-enacted to consist of new Section 83.1.1 through and including Section 83.10.1 to read as follows:

ARTICLE I

General Provisions

83.1.1. Findings.

The Federal Emergency Management Agency has identified special flood hazard areas within the boundaries of the City of Westminster, Maryland (hereinafter "City of Westminster"). Special flood hazard areas are subject to periodic inundation which may 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. Structures that are inadequately elevated, improperly floodproofed, or otherwise unprotected from flood damage also contribute to flood losses.

The Mayor and Common Council of Westminster (hereinafter "Mayor and Common Council") agreed to meet the requirements of the National Flood Insurance Program and was accepted for participation in the program on December 1, 1977. As of that date, all development and new construction as defined herein, are to be compliant with these regulations.

83.1.2. Statutory Authorization.

The Maryland General Assembly, in Article 66B, Section 4, General Development Regulations and Zoning (Annotated Code of Maryland), has established as policy of the State that the orderly development and use of land and structures requires comprehensive regulation through the implementation of planning and zoning control, and that planning and zoning controls shall be implemented by local government in order to, among other purposes, secure the public safety,

promote health and general welfare, and promote the conservation of natural resources. Therefore, the Mayor and Common Council does hereby adopt the following floodplain management regulations.

83.1.3. Statement of Purpose.

It is the purpose of these regulations to promote the public health, safety and general welfare, and to:

(A) Protect human life, health and welfare;

(B) Encourage the utilization of appropriate construction practices in order to prevent or minimize flood damage in the future;

(C) Minimize flooding of water supply and sanitary sewage disposal systems;

(D) Maintain natural drainage;

(E) Reduce financial burdens imposed on the community, its governmental units and its residents, by discouraging unwise design and construction of development in areas subject to flooding;

(F) Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;

(G) Minimize prolonged business interruptions;

(H) Minimize damage to public facilities and other utilities such as water and gas mains, electric, telephone and sewer lines, streets and bridges;

(I) Reinforce that those who build in and occupy special flood hazard areas should assume responsibility for their actions;

(J) Minimize the impact of development on adjacent properties within and near flood-prone areas;

(K) Provide that the flood storage and conveyance functions of floodplains are maintained;

(L) Minimize the impact of development on the natural and beneficial functions of floodplains;

(M) Prevent floodplain uses that are either hazardous or environmentally incompatible; and

(N) Meet community participation requirements of the National Flood Insurance Program as set forth in the Code of Federal Regulations at 44 C.F.R. Section 59.22.

83.1.4. Areas to Which These Regulations Apply.

These regulations shall apply to all special flood hazard areas within the jurisdiction of the City of Westminster, and identified in Section 83.1.5.

83.1.5. Basis for Establishing Special Flood Hazard Areas and BFEs.

(A) For the purposes of these regulations, the minimum basis for establishing special flood hazard areas and base flood elevations is the Flood Insurance Study ("FIS") for Carroll County, Maryland and Incorporated Areas, dated June 4, 2010 (Preliminary), or the most recent revision thereof, and the accompanying Flood Insurance Rate Map(s) ("FIRMs") and all subsequent amendments and revisions to the FIRMs. It is presently anticipated that the FIS and FIRMs will become effective on or about August 1, 2011. Accordingly, the effective of the new FIS and FIRMs will be that date which is six (6) months after the Federal Emergency Management Agency ("FEMA") issues a Letter of Final Determination ("LFD"). The LFD, FIS and FIRMs are retained on file and available to the public at the City of Westminster Administrative Offices, 56 West Main Street, Westminster, Maryland 21157.

(B) Where field surveyed topography or digital topography indicates that ground elevations are below the closest applicable base flood elevation, even in areas not delineated as a special flood hazard on the FIRM, the area shall be considered as special flood hazard area.

(C) To establish base flood elevations in special flood hazard areas that do not have such elevations shown on the FIRM, the Floodplain Administrator may provide the best available data for base flood elevations, may require the applicant to obtain available information from Federal, State or other sources, or may require the applicant to establish special flood hazard areas and base flood elevations as set forth in Section 83.3.3, Section 83.3.4, and Section 83.3.5 of these regulations.

83.1.6. Abrogation and Greater Restrictions.

These regulations are not intended to repeal or abrogate any existing regulations and ordinances, including subdivision regulations, zoning ordinances, building codes, or any existing easements, covenants, or deed restrictions. In the event of a conflict between these regulations and any other ordinance, the more restrictive shall govern.

83.1.7. Interpretation.

In the interpretation and application of these regulations, all provisions shall be:

(A) Considered as minimum requirements;

(B) Liberally construed in favor of the governing body; and,

(C) Deemed neither to limit nor repeal any other powers granted under State statutes; where a provision of these regulations may be in conflict with a State or Federal law, such State or Federal law shall take precedence.

Notes referencing publications of the Federal Emergency Management Agency refer to the most recent edition of those publications, are intended only as guidance, and do not bind or alter the authority of the Floodplain Administrator to interpret and apply these regulations.

83.1.8. Warning and Disclaimer of Liability.

The degree of flood protection required by these regulations is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur, and flood heights may be increased by man-made or natural causes. These regulations do not imply that land outside of the special flood hazard areas or uses that are permitted within such areas will be free from flooding or flood damage.

These regulations shall not create liability on the part of the City of Westminster, any officer or employee thereof, the Maryland Department of the Environment (MDE) or the Federal Emergency Management Agency (FEMA), for any flood damage that results from reliance on these regulations or any administrative decision lawfully made hereunder.

83.1.9. Severability.

Should any section or provision of these regulations be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the regulations as a whole, or any part thereof other than the part so declared to be unconstitutional or invalid.

ARTICLE II

Definitions

83.2.0. Definitions.

Unless specifically defined below, words or phrases used in these regulations shall be interpreted to have the meaning they have in common usage and to give these regulations the most reasonable application.

Accessory Structure: A building or structure on the same lot with, and of a nature customarily incidental and subordinate to, the principal structure. For the purposes of these regulations, an accessory structure shall be used solely for parking of vehicles and limited storage.

Agreement to Submit an Elevation Certificate: A form on which the applicant for a permit to construct a building or structure, to construct certain horizontal additions, to place or replace a manufactured home, to substantially improve a building, structure, or manufactured home, agrees to have an Elevation Certificate prepared by a licensed professional engineer or licensed professional surveyor, as specified by the Floodplain Administrator, and to submit the certificate:

(1) Upon placement of the lowest floor and prior to further vertical construction; and

(2) Prior to the final inspection and issuance of the Certificate of Occupancy.

Alteration of a Watercourse: For the purpose of these regulations, alteration of a watercourse includes, but is not limited to widening, deepening or relocating the channel, including excavation or filling of the channel. Alteration of a watercourse does not include construction of a road, bridge, culvert, dam, or in-stream pond unless the channel is proposed to be realigned or relocated as part of such construction.

Area of Shallow Flooding: A designated Zone AO on the Flood Insurance Rate Map with a 1-percent annual chance or greater of flooding to an average depth of one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable, and where velocity flow may be evident; such flooding is characterized by ponding or sheet flow.

Base Building: The building to which an addition is being added. This term is used in provisions relating to additions.

Base Flood: The flood having a one-percent chance of being equaled or exceeded in any given year; the base flood also is referred to as the 1-percent annual chance (100-year) flood.

Base Flood Elevation: The water surface elevation of the base flood in relation to the datum specified on the community's Flood Insurance Rate Map. In areas of shallow flooding, the base flood elevation is the highest adjacent natural grade elevation plus the depth number specified in feet on the Flood Insurance Rate Map, or at least four (4) feet if the depth number is not specified.

Basement: Any area of the building having its floor subgrade (below ground level) on all sides.

Building Code(s): The effective Maryland Building Performance Standards (COMAR 05.02.07), including the building code, residential code, and existing building code.

Community: A political subdivision of the State of Maryland (county, city or town) that has authority to adopt and enforce floodplain management regulations within its jurisdictional boundaries.

Critical and Essential Facilities: Buildings and other structures that are intended to remain operational in the event of extreme environmental loading from flood, wind, snow or earthquakes. [Note: See Maryland Building Performance Standards, Sec. 1602 and Table 1604.5.] Critical and essential facilities typically include hospitals, fire stations, police stations, storage of critical records, facilities that handle or store hazardous materials, and similar facilities.

Declaration of Land Restriction (Nonconversion Agreement): A form signed by the owner to agree not to convert or modify in any manner that is inconsistent with the terms of the permit and these regulations, certain enclosures below the lowest floor of elevated buildings and certain

accessory structures. The form requires the owner to record it on the property deed to inform future owners of the restrictions.

Development: Any manmade change to improved or unimproved real estate, including but not limited to buildings or other structures, placement of manufactured homes, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.

Elevation Certificate: FEMA Form 81-31, on which surveyed elevations and other data pertinent to a property and a building are identified and which shall be completed by a licensed professional land surveyor or a licensed professional engineer, as specified by the Floodplain Administrator. When used to document the height above grade of buildings in special flood hazard areas for which base flood elevation data are not available, the Elevation Certificate shall be completed in accordance with the instructions issued by FEMA. [Note: FEMA Form 81-31 and instructions are available online at http://www.fema.gov/library/viewRecord.do?id=1383.]

Enclosure Below the Lowest Floor: An unfinished or flood-resistant enclosure that is located below an elevated building, is surrounded by walls on all sides, and is usable solely for parking of vehicles, building access or storage, in an area other than a basement area, provided that such enclosure is built in accordance with the applicable design requirements specified in these regulations. Also see "Lowest Floor."

Federal Emergency Management Agency (FEMA): The Federal agency with the overall responsibility for administering the National Flood Insurance Program.

Flood or Flooding: A general and temporary condition of partial or complete inundation of normally dry land areas from:

(1) The overflow of inland or tidal waters, and/or

(2) The unusual and rapid accumulation or runoff of surface waters from any source.

Flood Damage-Resistant Materials: Any construction material that is capable of withstanding direct and prolonged contact with floodwaters without sustaining any damage that requires more than cosmetic repair. [Note: See NFIP Technical Bulletin #2, "Flood Damage-Resistant Materials Requirements."]

Flood Insurance Rate Map (FIRM): An official map on which the Federal Emergency Management Agency has delineated special flood hazard areas to indicate the magnitude and nature of flood hazards, to designate applicable flood zones, and to delineate floodways, if applicable. FIRMs that have been prepared in digital format or converted to digital format are referred to as Digital FIRMs (DFIRM).

Flood Insurance Study (FIS): The official report in which the Federal Emergency Management Agency has provided flood profiles, floodway information, and the water surface elevations.

Flood Opening: A flood opening (non-engineered) is an opening that is used to meet the prescriptive requirement of 1 square inch of net open area for every square foot of enclosed area. An engineered flood opening is an opening that is designed and certified by a licensed professional engineer or licensed architect as meeting certain performance characteristics, including providing automatic entry and exit of floodwaters; the certification requirement may be satisfied by an individual certification or issuance of an Evaluation Report by the ICC Evaluation Service, Inc. [Note: See NFIP Technical Bulletin #1, "Openings in Foundation Walls and Walls of Enclosures."]

Flood Protection Elevation: The base flood elevation plus two (2) feet of freeboard. Freeboard is a factor of safety that compensates for uncertainty in factors that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions, such as wave action, obstructed bridge openings, debris and ice jams, climate change, and the hydrologic effect of urbanization in a watershed.

Flood Protection Setback: A distance measured perpendicular to the top of bank of a watercourse that delineates an area to be left undisturbed to minimize future flood damage and to recognize the potential for bank erosion. Along nontidal waters of the State, the flood protection setback is:

(1) 100 feet, if the watercourse has special flood hazard areas shown on the FIRM, except where the setback extends beyond the boundary of the flood hazard area; or

(2) 50 feet, if the watercourse does not have special flood hazard areas shown on the FIRM.

Flood Zone: A designation for areas that are shown on Flood Insurance Rate Maps:

(1) **Zone A:** Special flood hazard areas subject to inundation by the 1-percent annual chance (100-year) flood; base flood elevations are not determined.

(2) **Zone AE and Zone A1-30:** Special flood hazard areas subject to inundation by the 1-percent annual chance (100-year) flood; base flood elevations are determined; floodways may or may not be determined.

(3) **Zone AH and Zone AO:** Areas of shallow flooding, with flood depths of 1 to 3 feet (usually areas of ponding or sheet flow on sloping terrain), with or without BFEs or designated flood depths.

(4) **Zone B and Zone X (shaded):** Areas subject to inundation by the 0.2-percent annual chance (500-year) flood; areas subject to the 1-percent annual chance (100-year) flood with average depths of less than 1 foot or with contributing drainage area less than 1 square mile; and areas protected from the base flood by levees.

(5) **Zone C and Zone X (unshaded):** Areas outside of Zones designated A, AE, A1-30, AO, VE, V1-30, B, and X (shaded).

(6) **Zone VE and Zone V1-30:** Special flood hazard areas subject to inundation by the 1-percent annual chance (100-year) flood and subject to high velocity wave action (also see coastal high hazard area).

Floodplain: Any land area susceptible to being inundated by water from any source (see definition of "Flood" or "Flooding").

Floodproofing or Floodproofed: Any combination of structural and nonstructural additions, changes, or adjustments to buildings or structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents, such that the buildings or structures are watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. [Note: State regulations at COMAR 26.17.04.11(B)(7) do not allow new nonresidential buildings in nontidal waters of the State to be floodproofed.]

Floodproofing Certificate: FEMA Form 81-65 that is to be completed, signed and sealed by a licensed professional engineer or licensed architect to certify that the design of floodproofing and proposed methods of construction are in accordance with the applicable requirements of Section 5.5(B) of these regulations. [Note: FEMA Form 81-65 is available online at http://www.fema.gov/library/viewRecord.do?id=1600.]

Floodway: The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to pass the base flood discharge such that the cumulative increase in the water surface elevation of the base flood discharge is no more than a designated height. When shown on a FIRM, the floodway is referred to as the "designated floodway."

Functionally Dependent Use: A use which cannot perform its intended purpose unless it is located or carried out in close proximity to water; the term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, but does not include long-term storage or related manufacturing facilities.

Highest Adjacent Grade: The highest natural elevation of the ground surface, prior to construction, next to the proposed foundation of a structure.

Historic Structure: Any structure that is:

(1) Individually listed in the National Register of Historic Places (a listing maintained by the U.S. Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listings 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 the Maryland Inventory of Historic Properties maintained by the Maryland Historical Trust; or

(4) Individually listed on the inventory of historic places maintained by the City of Westminster whose historic preservation program has been certified by the Maryland Historical Trust or the Secretary of the Interior.

Hydrologic and Hydraulic Engineering Analyses: Analyses performed by a licensed professional engineer, in accordance with standard engineering practices that are accepted by the Maryland Department of the Environment (Nontidal Wetlands & Waterways) and FEMA, used to determine the base flood, other frequency floods, flood elevations, floodway information and boundaries, and flood profiles.

Letter of Map Change (LOMC): A Letter of Map Change is an official FEMA determination, by letter, that amends or revises an effective Flood Insurance Rate Map or Flood Insurance Study. Letters of Map Change include:

Letter of Map Amendment (LOMA): An amendment based on technical data showing that a property was incorrectly included in a designated special flood hazard area. A LOMA amends the current effective Flood Insurance Rate Map and establishes that a specific property or structure is not located in a special flood hazard area.

Letter of Map Revision (LOMR): A revision based on technical data that may show changes to flood zones, flood elevations, floodplain and floodway delineations, and planimetric features. A Letter of Map Revision Based on Fill (LOMR-F), is a determination that a structure or parcel of land has been elevated by fill above the base flood elevation and is, therefore, no longer exposed to flooding associated with the base flood. In order to qualify for this determination, the fill must have been permitted and placed in accordance with the community's floodplain management regulations.

Conditional Letter of Map Revision (CLOMR): A formal review and comment as to whether a proposed flood protection project or other project complies with the minimum NFIP requirements for such projects with respect to delineation of special flood hazard areas. A CLOMR does not revise the effective Flood Insurance Rate Map or Flood Insurance Study; upon submission and approval of certified as-built documentation, a Letter of Map Revision may be issued by FEMA, to revise the effective FIRM.

Licensed: As used in these regulations, licensed refers to professionals who are authorized to practice in the State of Maryland by issuance of licenses by the Maryland Board of Architects, Maryland Board of Professional Engineers, Maryland Board of Professional Land Surveyors, and the Maryland Real Estate Appraisers and Home Inspectors Commission.

Lowest Floor: The lowest floor of the lowest enclosed area (including basement) of a building or structure; the floor of an enclosure below the lowest floor is not the lowest floor provided the enclosure is constructed in accordance with these regulations. The lowest floor of a manufactured home is the bottom of the lowest horizontal supporting member (longitudinal chassis frame beam).

Manufactured Home: 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 connected to the required utilities. The term manufactured home does not include a recreational vehicle.

Market Value: The price at which a property will change hands between a willing buyer and a willing seller, neither party being under compulsion to buy or sell and both having reasonable knowledge of relevant facts. For the purposes of these regulations, the market value of a building is determined by a licensed real estate appraiser or the most recent, full phased-in assessment value of the building (improvement) determined by the Maryland Department of Assessments and Taxation.

Maryland Department of the Environment (MDE): A principal department of the State of Maryland that is charged with, among other responsibilities, the coordination of the National Flood Insurance Program in Maryland (NFIP State Coordinator) and the administration of regulatory programs for development and construction that occur within the waters of the State, including nontidal wetlands, nontidal waters and floodplains, and State and private tidal wetlands (Tidal Wetlands). Unless otherwise specified, "MDE" refers to the Department's Wetlands and Waterways Program.

National Flood Insurance Program (NFIP): The program authorized by the U.S. Congress in 42 U.S.C. §§4001 - 4129. The NFIP makes flood insurance coverage available in communities that agree to adopt and enforce minimum regulatory requirements for development in areas prone to flooding (see definition of "Special Flood Hazard Area").

New Construction: Structures, including additions and improvements, and the placement of manufactured homes, for which the start of construction commenced on or after December 1, 1977, the initial effective date of the City of Westminster Flood Insurance Rate Map, including any subsequent improvements, alterations, modifications, and additions to such structures.

NFIP State Coordinator: See Maryland Department of the Environment.

Nontidal Waters of the State: See "Waters of the State." As used in these regulations, "nontidal waters of the State" refers to any stream or body of water within the State that is subject to State regulation, including the "100-year frequency floodplain of free-flowing waters." COMAR 26.17.04 states that "the landward boundaries of any tidal waters shall be deemed coterminous with the wetlands boundary maps adopted pursuant to Environment Article, §16-

301, Annotated Code of Maryland." Therefore, the boundary between the tidal and nontidal waters of the State is the tidal wetlands boundary.

Person: An individual or group of individuals, corporation, partnership, association, or any other entity, including State and local governments and agencies.

Recreational Vehicle: A vehicle that is built on a single chassis, 400 square feet or less when measured at the largest horizontal projection, designed to be self-propelled or permanently towable by a light duty truck, and designed primarily not for use as a permanent dwelling, but as temporary living quarters for recreational, camping, travel, or seasonal use.

Special Flood Hazard Area (SFHA): The land in the floodplain subject to a one-percent or greater chance of flooding in any given year. Special flood hazard areas are designated by the Federal Emergency Management Agency in Flood Insurance Studies and on Flood Insurance Rate Maps as Zones A, AE, AH, AO, A1-30, and A99. The term includes areas shown on other flood maps that are identified in Section 83.1.5.

Start of Construction: The date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. 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 structures, such as garages or sheds not occupied as dwelling units or not part of the main structure. For substantial improvements, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

Structure: That which is built or constructed; specifically, a walled and roofed building, including a gas or liquid storage tank that is principally above ground, as well as a manufactured home.

Substantial Damage: Damage of any origin sustained by a building or structure whereby the cost of restoring the building or structure to its before damaged condition would equal or exceed 50 percent of the market value of the building or structure before the damage occurred. Also used as "substantially damaged" structures.

Substantial Improvement: Any reconstruction, rehabilitation, addition, or other improvement of a building or structure, the cost of which equals or exceeds 50 percent of the market value of the building or structure before the start of construction of the improvement. The term includes

structures which have incurred substantial damage, regardless of the actual repair work performed. The term does not, however, include either:

(1) Any project for improvement of a building or structure to correct existing violations of State or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official prior to submission of an application for a permit and which are the minimum necessary to assure safe living conditions; or

(2) Any alteration of a historic structure, provided that the alteration will not preclude the structure's continued designation as a historic structure.

Temporary Structure: A structure installed, used, or erected for a period of less than 180 days.

Variance: A grant of relief from the strict application of one or more requirements of these regulations.

Violation: Any construction or development in a special flood hazard area that is being performed without an issued permit. The failure of a building, structure, or other development for which a permit is issued to be fully compliant with these regulations and the conditions of the issued permit. A building, structure, or other development without the required design certifications, the Elevation Certificate, or other evidence of compliance required is presumed to be a violation until such time as the required documentation is provided.

Watercourse: The channel, including channel banks and bed, of nontidal waters of the State.

Waters of the State: [See Environment Article, Title 5, Subtitle 1, Annotated Code of Maryland.] Waters of the State include:

(1) Both surface and underground waters within the boundaries of the State subject to its jurisdiction;

(2) That portion of the Atlantic Ocean within the boundaries of the State;

(3) The Chesapeake Bay and its tributaries;

(4) All ponds, lakes, rivers, streams, public ditches, tax ditches, and public drainage systems within the State, other than those designed and used to collect, convey, or dispose of sanitary sewage; and

(5) The floodplain of free-flowing waters determined by MDE on the basis of the 100-year flood frequency.

ARTICLE III

ADMINISTRATION

83.3.1. Designation of the Floodplain Administrator.

The Director of Public Works, City of Westminster, Maryland, hereinafter "Director", is hereby appointed to administer and implement these regulations and is referred to herein as the Floodplain Administrator. The Floodplain Administrator may:

(A) Delegate duties and responsibilities set forth in these regulations to qualified technical personnel, plan examiners, inspectors, and other employees.

(B) Enter into a written agreement or written contract with another Maryland community or private sector entity to administer specific provisions of these regulations. Administration of any part of these regulations by another entity shall not relieve the community of its responsibilities pursuant to the participation requirements of the National Flood Insurance Program as set forth in the Code of Federal Regulations at 44 C.F.R. Section 59.22.

83.3.2. Duties and Responsibilities of the Floodplain Administrator.

The duties and responsibilities of the Floodplain Administrator shall include but are not limited to:

(A) Review applications for permits to determine whether proposed activities will be located in flood hazard areas.

(B) Interpret floodplain boundaries and provide available base flood elevation and flood hazard information.

(C) Review applications to determine whether proposed activities will be reasonably safe from flooding and require new construction and substantial improvements to meet the requirements of these regulations.

(D) Review applications to determine whether all necessary permits have been obtained from the Federal, State or local agencies from which prior or concurrent approval is required; in particular, permits from MDE for any construction, reconstruction, repair, or alteration of a dam, reservoir, or waterway obstruction (including bridges, culverts, structures), any alteration of a watercourse, or any change of the course, current, or cross section of a stream or body of water, including any change to the 100-year frequency floodplain of free-flowing nontidal waters of the State.

(E) Verify that applicants proposing an alteration of a watercourse have notified adjacent communities and MDE (NFIP State Coordinator), and have submitted copies of such notifications to FEMA.

(F) Approve applications and issue permits to develop in flood hazard areas if the provisions of these regulations have been met, or disapprove applications if the provisions of these regulations have not been met.

(G) Inspect or cause to be inspected, buildings, structures, and other development for which permits have been issued to determine compliance with these regulations or to determine if non-compliance has occurred or violations have been committed.

(H) Review Elevation Certificates and require incomplete or deficient certificates to be corrected.

(I) Submit to FEMA, or require applicants to submit to FEMA, data and information necessary to maintain FIRMs, including hydrologic and hydraulic engineering analyses prepared by or for the City of Westminster, within six months after such data and information becomes available if the analyses indicate changes in base flood elevations.

(J) Maintain and permanently keep records that are necessary for the administration of these regulations, including:

(1) Flood Insurance Studies, Flood Insurance Rate Maps (including historic studies and maps and current effective studies and maps) and Letters of Map Change; and

(2) Documentation supporting issuance and denial of permits, Elevation Certificates, documentation of the elevation (in relation to the datum on the FIRM) to which structures have been floodproofed, other required design certifications, variances, and records of enforcement actions taken to correct violations of these regulations.

(K) Enforce the provisions of these regulations, investigate violations, issue notices of violations or stop work orders, and require permit holders to take corrective action.

(L) Advise the Mayor and Common Council regarding the intent of these regulations and, for each application for a variance, prepare a staff report and recommendation.

(M) Administer the requirements related to proposed work on existing buildings:

(1) Make determinations as to whether buildings and structures that are located in flood hazard areas and that are damaged by any cause have been substantially damaged.

(2) Make reasonable efforts to notify owners of substantially damaged structures of the need to obtain a permit to repair, rehabilitate, or reconstruct, and prohibit the non-compliant repair of substantially damaged buildings except for temporary

emergency protective measures necessary to secure a property or stabilize a building or structure to prevent additional damage.

(N) Undertake, as determined appropriate by the Floodplain Administrator due to the circumstances, other actions which may include but are not limited to: issuing press releases, public service announcements, and other public information materials related to permit requests and repair of damaged structures; coordinating with other Federal, State, and local agencies to assist with substantial damage determinations; providing owners of damaged structures information related to the proper repair of damaged structures in special flood hazard areas; and assisting property owners with documentation necessary to file claims for Increased Cost of Compliance coverage under NFIP flood insurance policies.

(O) Notify the Federal Emergency Management Agency when the corporate boundaries of the City of Westminster have been modified and:

(1) Provide a map that clearly delineates the new corporate boundaries or the new area for which the authority to regulate pursuant to these regulations has either been assumed or relinquished through annexation; and

(2) If the FIRM for any annexed area includes special flood hazard areas that have flood zones that have regulatory requirements that are not set forth in these regulations, prepare amendments to these regulations to adopt the FIRM and appropriate requirements, and submit the amendments to the governing body for adoption; such adoption shall take place within six months of the date of annexation and a copy of the amended regulations shall be provided to MDE (NFIP State Coordinator) and FEMA.

(P) Upon the request of FEMA, complete and submit a report concerning participation in the NFIP which may request information regarding the number of buildings in the SFHA, number of permits issued for development in the SFHA, and number of variances issued for development in the SFHA.

83.3.3. Use and Interpretation of FIRMs.

The Floodplain Administrator shall make interpretations, where needed, as to the exact location of special flood hazard areas, floodplain boundaries, and floodway boundaries. The following shall apply to the use and interpretation of FIRMs and data:

(A) Where field surveyed topography indicates that ground elevations:

(1) Are below the base flood elevation, even in areas not delineated as a special flood hazard area on a FIRM, the area shall be considered as special flood hazard area and subject to the requirements of these regulations;

(2) Are above the base flood elevation, the area shall be regulated as special flood hazard area unless the applicant obtains a Letter of Map Change that removes the area from the special flood hazard area.

(B) In FEMA-identified special flood hazard areas where base flood elevation and floodway data have not been identified and in areas where FEMA has not identified special flood hazard areas, any other flood hazard data available from a Federal, State, or other source shall be reviewed and reasonably used.

(C) Base flood elevations and designated floodway boundaries on FIRMs and in FISs shall take precedence over base flood elevations and floodway boundaries by any other sources if such sources show reduced floodway widths and/or lower base flood elevations.

(D) Other sources of data shall be reasonably used if such sources show increased base flood elevations and/or larger floodway areas than are shown on FIRMs and in FISs.

(E) If a Preliminary Flood Insurance Rate Map and/or a Preliminary Flood Insurance Study has been provided by FEMA:

(1) Upon the issuance of a Letter of Final Determination by FEMA, the preliminary flood hazard data shall be used and shall replace the flood hazard data previously provided from FEMA for the purposes of administering these regulations.

(2) Prior to the issuance of a Letter of Final Determination by FEMA, the use of preliminary flood hazard data shall be deemed the best available data pursuant to Section 83.1.5(C) and used where no base flood elevations and/or floodway areas are provided on the effective FIRM.

(3) Prior to issuance of a Letter of Final Determination by FEMA, the use of preliminary flood hazard data is permitted where the preliminary base flood elevations or floodway areas exceed the base flood elevations and/or designated floodway widths in existing flood hazard data provided by FEMA. Such preliminary data may be subject to change and/or appeal to FEMA.

83.3.4. Permits Required and Expiration.

(A) It shall be unlawful for any person to begin any development or construction which is wholly within, partially within, or in contact with any flood hazard area established in Section 83.1.5, including but not limited to: filling; grading; construction of new structures; the substantial improvement of buildings or structures, including repair of substantial damage; placement or replacement of manufactured homes, including substantial improvement or repair of substantial damage of manufactured homes; erecting or installing a temporary structure, or alteration of a watercourse, until a

permit is obtained from the City of Westminster. No such permit shall be issued until the requirements of these regulations have been met.

(B) In addition to the permits required in paragraph (A), applicants for permits in nontidal waters of the State are advised to contact MDE. Unless waived by MDE, pursuant to Code of Maryland Regulations 26.17.04, Construction on Nontidal Waters and Floodplains, MDE regulates the "100-year frequency floodplain of free-flowing waters," also referred to as nontidal waters of the State. To determine the 100-year frequency floodplain, hydrologic calculations are based on the ultimate development of the watershed, assuming existing zoning. The resulting flood hazard areas delineated using the results of such calculations may be different than the special flood hazard areas established in Section 83.1.5 of these regulations.

(C) A permit is valid provided the actual start of work is within 180 days of the date of permit issuance. Requests for extensions shall be submitted in writing. The Floodplain Administrator may grant, in writing, one or more extensions of time, for periods not more that 180 days each.

83.3.5. Application Required.

Application for a permit shall be made by the owner of the property or the owner's authorized agent (herein referred to as the applicant) prior to the start of any work. The application shall be on a form furnished for that purpose.

(A) Application Contents

At a minimum, applications shall include:

(1) Site plans drawn to scale showing the nature, location, dimensions, and existing and proposed topography of the area in question, and the location of existing and proposed structures, excavation, filling, storage of materials, drainage facilities, and other proposed activities.

(2) Elevation of the existing natural ground where buildings or structures are proposed, referenced to the datum on the FIRM.

(3) Delineation of flood hazard areas, designated floodway boundaries, flood zones, base flood elevations, and flood protection setbacks. Base flood elevations shall be used to delineate the boundary of flood hazard areas and such delineations shall prevail over the boundary of SFHAs shown on FIRMs.

(4) Where floodways are not delineated or base flood elevations are not shown on the FIRMs, the Floodplain Administrator has the authority to require the applicant to use information provided by the Floodplain Administrator, information that is available from Federal, State, or other sources, or to

determine such information using accepted engineering practices or methods approved by the Floodplain Administrator. [Note: See "Managing Floodplain Development in Approximate Zone A Areas: A Guide for Obtaining and Developing Base (100-Year) Flood Elevations" (FEMA 265).]

(5) Determination of the base flood elevations, for development proposals and subdivision proposals, each with at least 5 lots or at least 5 acres, whichever is the lesser, in special flood hazard areas where base flood elevations are not shown on the FIRM; if hydrologic and hydraulic engineering analyses are submitted, such analyses shall be performed in accordance with the requirements and specifications of MDE and FEMA.

(6) Hydrologic and hydraulic engineering analyses for proposals in special flood hazard areas where FEMA has provided base flood elevations but has not delineated a floodway; such analyses shall demonstrate that the cumulative effect of proposed development, when combined with all other existing and anticipated development will not increase the water surface elevation of the base flood by more than one foot or a lower increase if required by MDE.

(7) For encroachments in floodways, an evaluation of alternatives to such encroachments, including different uses of the site or portion of the site within the floodway, and minimization of such encroachment.

(8) If fill is proposed to be placed for a purpose other than to elevate structures, the applicant shall indicate the intended purpose for the fill.

(9) For proposed buildings and structures, including substantial improvement and repair of substantial damage, and placement and replacement of manufactured homes, including substantial improvement and repair of substantial damage:

(a) The proposed elevation of the lowest floor, including basement, referenced to the datum on the FIRM and a signed Agreement to Submit an Elevation Certificate.

(b) The signed Declaration of Land Restriction (Nonconversion Agreement) that shall be recorded on the property deed prior to issuance of the Certificate of Occupancy, if the application includes an enclosure below the lowest floor or a crawl/underfloor space that is more than four (4) feet in height.

(c) A written evaluation of alternative methods considered to elevate structures and manufactured homes, if the location is in nontidal waters of the State and fill is proposed to achieve the elevation required in Section 83.5.4(A) or Section 83.5.5(A).

(10) For accessory structures that are 300 square feet or larger in area (footprint) that are below the base flood elevation, a Declaration of Land Restriction (Nonconversion Agreement) shall be recorded on the property deed prior to issuance of the Certificate of Occupancy.

(11) For temporary structures and temporary storage, specification of the duration of the temporary use.

(12) For proposed work on existing buildings, structure, and manufactured homes, including any improvement, addition, repairs, alterations, rehabilitation, or reconstruction, sufficient information to determine if the work constitutes substantial improvement or repair of substantial damage, including but not limited to:

(a) If the existing building or structure was constructed after December 1, 1977, evidence that the work will not alter any aspect of the building or structure that was required for compliance with the floodplain management requirements in effect at the time the building or structure was permitted.

(b) If the proposed work is a horizontal addition, a description of the addition and whether it will be independently supported or structurally connected to the base building and the nature of all other modifications to the base building, if any.

(c) Documentation of the market value of the building or structure before the improvement or, if the work is repair of damage, before the damage occurred.

(d) Documentation of the actual cash value of all proposed work, including the actual cash value of all work necessary to repair and restore damage to the before-damaged condition, regardless of the amount of work that will be performed. The value of work performed by the owner or volunteers shall be valued at market labor rates; the value of donated or discounted materials shall be valued at market rates.

(13) Certifications and/or technical analyses prepared or conducted by a licensed professional engineer or licensed architect, as appropriate, including:

(a) The determination of the base flood elevations or hydrologic and hydraulic engineering analyses prepared by a licensed professional engineer that are required by the Floodplain Administrator or are required by these regulations in: Section 83.4.2 for certain subdivisions and development; Section 83.5.3(A) for development in designated floodways; Section

83.5.3(C) for development in flood hazard areas with base flood elevations but no designated floodways; and Section 83.5.3(E) for deliberate alteration or relocation of watercourses.

(b) The Floodproofing Certificate for nonresidential structures that are floodproofed as required in Section 83.5.5(B).

(c) Certification that engineered flood openings are designed to meet the minimum requirements of Section 83.5.4(C)(3) to automatically equalize hydrostatic flood forces.

(14) For nonresidential structures that are proposed with floodproofing, an operations and maintenance plan as specified in Section 83.5.5(B)(3).

(15) Such other material and information as may be requested by the Floodplain Administrator and necessary to determine conformance with these regulations.

(B) New Technical Data

(1) The applicant may seek a Letter of Map Change by submitting new technical data to FEMA, such as base maps, topography, and engineering analyses to support revision of floodplain and floodway boundaries and/or base flood elevations. Such submissions shall be prepared in a format acceptable to FEMA and any fees shall be the sole responsibility of the applicant. A copy of the submittal shall be attached to the application for a permit.

(2) If the applicant submits new technical data to support any change in floodplain and designated floodway boundaries and/or base flood elevations but has not sought a Letter of Map Change from FEMA, the applicant shall submit such data to FEMA as soon as practicable, but not later than six months after the date such information becomes available. Such submissions shall be prepared in a format acceptable to FEMA and any fees shall be the sole responsibility of the applicant.

83.3.6. Review of Application.

The Floodplain Administrator shall:

(A) Review applications for development in special flood hazard areas to determine the completeness of information submitted. The applicant shall be notified of incompleteness or additional information that is required to support the application.

(B) Notify applicants that permits from MDE and the U.S. Army Corps of Engineers, and other State and Federal authorities may be required.

(C) Review all permit applications to assure that all necessary permits have been received from the Federal, State or local governmental agencies from which prior approval is required. The applicant shall be responsible for obtaining such permits, including permits issued by:

(1) The U.S. Army Corps of Engineers under Section 10 of the Rivers and Harbors Act and Section 404 of the Clean Water Act;

(2) MDE pursuant to COMAR 26.23 (Nontidal Wetlands) and Section 401 of the Clean Water Act; and,

(3) MDE for construction on nontidal waters of the State pursuant to COMAR 26.17.04.

(D) Review applications for compliance with these regulations after all information required in Section 83.3.5 of these regulations or identified and required by the Floodplain Administrator has been received.

83.3.7. Inspections.

The Floodplain Administrator shall make periodic inspections of development permitted in special flood hazard areas, at appropriate times throughout the period of construction in order to monitor compliance. Such inspections may include:

(A) Stake-out inspection, to determine location on the site relative to the flood hazard area and designated floodway.

(B) Foundation inspection, upon placement of the lowest floor and prior to further vertical construction, to collect information or certification of the elevation of the lowest floor.

(C) Inspection of enclosures below the lowest floor, including crawl/underfloor spaces, to determine compliance with applicable provisions.

(D) Utility inspection, upon installation of specified equipment and appliances, to determine appropriate location with respect to the base flood elevation.

(E) Final inspection prior to issuance of the Certificate of Occupancy.

83.3.8. Submissions Required Prior to Final Inspection.

Pursuant to the Agreement to Submit an Elevation Certificate submitted with the application as required in Section 83.3.5(A)(9), the permittee shall have an Elevation Certificate prepared and submitted prior to final inspection and issuance of a Certificate of Occupancy for elevated structures and manufactured homes, including new structures and manufactured homes,

substantially-improved structures and manufactured homes, and additions to structures and manufactured homes.

ARTICLE IV

Requirements in All Flood Hazard Areas

83.4.1. Application of Requirements.

The general requirements of this section apply to all development proposed within all special flood hazard areas identified in Section 83.1.5.

83.4.2. Subdivision Proposals and Development Proposals.

(A) In all flood zones:

(1) Subdivision proposals and development proposals shall be consistent with the need to minimize flood damage and are subject to all applicable standards in these regulations.

(2) Subdivision proposals and development proposals shall have utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage.

(3) Subdivision proposals and development proposals shall have adequate drainage paths provided to reduce exposure to flood hazards and to guide floodwaters around and away from proposed structures.

(4) Subdivision proposals and development proposals containing at least 5 lots or at least 5 acres, whichever is the lesser, that are wholly or partially in flood hazard areas where base flood elevation data are not provided by the Floodplain Administrator or available from other sources, shall be supported by determinations of base flood elevations as required in Section 83.3.5 of these regulations.

(5) Subdivision access roads shall have the driving surface at or above the base flood elevation.

(B) In special flood hazard areas of nontidal waters of the State:

(1) Subdivision proposals shall be laid out such that proposed building pads are located outside of the special flood hazard area and any portion of platted lots that include land areas that are below the base flood elevation shall be used for other purposes, deed restricted, or otherwise protected to preserve it as open space.

(2) Subdivision access roads shall have the driving surface at or above the base flood elevation.

83.4.3. Protection of Water Supply and Sanitary Sewage Systems.

(A) New and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems.

(B) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters into systems and discharges from systems into floodwaters.

(C) On-site waste disposal systems shall be located to avoid impairment to or contamination from them during conditions of flooding.

83.4.4. Buildings and Structures.

New buildings and structures (including the placement and replacement of manufactured homes) and substantial improvement of existing structures (including manufactured homes) that are located, in whole or in part, in any special flood hazard area shall:

(A) Be designed (or modified) and constructed to safely support flood loads. The construction shall provide a complete load path capable of transferring all loads from their point of origin through the load-resisting elements to the foundation. Structures shall be designed, connected and anchored to resist flotation, collapse or permanent lateral movement due to structural loads and stresses, including hydrodynamic and hydrostatic loads and the effects of buoyancy, from flooding equal to the flood protection elevation or the elevation required by these regulations or the building code, whichever is higher.

(B) Be constructed by methods and practices that minimize flood damage.

(C) Use flood damage-resistant materials below the elevation of the lowest floor required in Section 83.5.4(A) or Section 83.5.5(A).

(D) Have electrical systems, equipment and components, and mechanical, heating, ventilating, air conditioning, and plumbing appliances, plumbing fixtures, duct systems, and other service equipment located at or above the elevation of the lowest floor required in Section 83.5.4(A) or Section 83.5.5(A). Electrical wiring systems are permitted to be located below elevation of the lowest floor provided they conform to the provisions of the electrical part of the building code for wet locations. If replaced as part of a substantial improvement, electrical systems, equipment and components, and heating, ventilation, air conditioning, and plumbing appliances, plumbing fixtures, duct systems, and other service equipment shall meet the requirements of this section.

(E) As an alternative to paragraph (D), electrical systems, equipment and components, and heating, ventilating, air conditioning, and plumbing appliances, plumbing fixtures, duct systems, and other service equipment are permitted to be located below the elevation of the lowest floor provided they are designed and installed to prevent water from entering or accumulating within the components and to resist hydrostatic and hydrodynamic loads and stresses, including the effects of buoyancy, during the occurrence of flooding to that elevation.

(F) Have the electric panelboard elevated at least three (3) feet above the BFE.

(G) Comply with the specific requirements of Section 83.5.0.

(H) Comply with the requirements of the most restrictive designation if located on a site that has more than one flood zone designation (A Zone, designated floodway).

83.4.5. Placement of Fill.

(A) Disposal of fill, including but not limited to earthen soils, rock, rubble, construction debris, woody debris, and trash, shall not be permitted in special flood hazard areas.

(B) Fill proposed to be placed to elevate structures in flood hazard areas shall comply with the floodways requirements in Section 83.5.3(A), Section 83.5.3(B), and Section 83.5.3(C) and the limitations of Section 83.5.4(B).

83.4.6 Historic Structures.

Repair, alteration, addition, rehabilitation, or other improvement of historic structures shall be subject to the requirements of these regulations if the proposed work is determined to be a substantial improvement, unless a determination is made that the proposed work will not preclude the structure's continued designation as a historic structure. The Floodplain Administrator may require documentation of a structure's continued eligibility and designation as a historic structure.

83.4.7. Manufactured Homes.

(A) New manufactured homes shall not be placed or installed in floodways.

(B) For the purpose of these regulations, the lowest floor of a manufactured home is the bottom of the lowest horizontal supporting member (longitudinal chassis frame beam).

(C) New manufactured homes located outside of floodways, replacement manufactured homes in any flood hazard areas, and substantial improvement (including repair of substantial damage) of existing manufactured homes in all flood hazard area, shall:

(1) Be elevated on a permanent, reinforced foundation in accordance with Section 83.5.0;

(2) Be installed in accordance with the anchor and tie-down requirements of the building code or the manufacturer's written installation instructions and specifications; and

(3) Have enclosures below the lowest floor of the elevated manufactured home, if any, including enclosures that are surrounded by rigid skirting or other material that is attached to the frame or foundation, that comply with the requirements of Section 83.5.0.

[Note: See "Protecting Manufactured Homes from Floods and Other Hazards: A Multi-Hazard Foundation and Installation Guide" (FEMA P-85).]

83.4.8. Recreational Vehicles.

Recreational vehicles shall:

(A) Meet the requirements for manufactured homes in Section 83.4.7; or

(B) Be fully licensed and ready for highway use; or

(C) Be on a site for less than 180 consecutive days.

83.4.9. Critical and Essential Facilities.

Critical and essential facilities shall be elevated to the higher of elevation required by these regulations plus one (1) foot, the elevation required by the building code, or the elevation of the 0.2 percent chance (500-year) flood.

83.4.10. Temporary Structures and Temporary Storage.

In addition to the application requirements of Section 83.3.5, applications for the placement or erection of temporary structures and the temporary storage of any goods, materials, and equipment, shall specify the duration of the temporary use. Temporary structures and temporary storage in floodways shall meet the limitations of Section 83.5.3(A) of these regulations. In addition:

(A) Temporary structures shall:

(1) Be designed and constructed to prevent flotation, collapse or lateral movement resulting from hydrodynamic loads and hydrostatic loads during conditions of the base flood;

(2) Have electric service installed in compliance with the electric code; and

(3) Comply with all other requirements of the applicable State and local permit authorities.

(B) Temporary storage shall not include hazardous materials.

83.4.11. Gas or Liquid Storage Tanks.

(A) Underground tanks in flood hazard areas shall be anchored to prevent flotation, collapse or lateral movement resulting from hydrostatic loads, including the effects of buoyancy, during conditions of the base flood.

(B) Above-ground tanks in flood hazard areas shall be anchored to a supporting structure and elevated to or above the base flood elevation, or shall be anchored or otherwise designed and constructed to prevent flotation, collapse, or lateral movement resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy, during conditions of the base flood.

(C) In flood hazard areas, tank inlets, fill openings, outlets and vents shall be:

(1) At or above the base flood elevation or fitted with covers designed to prevent the inflow of floodwater or outflow of the contents of the tanks during conditions of the base flood; and

(2) Anchored to prevent lateral movement resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy, during conditions of the base flood.

83.4.12. Functionally Dependent Uses.

Applications for functionally dependent uses that do not conform to the requirements of these regulations shall be approved only by variances issued pursuant to Section 83.6.0. If approved, functionally dependent uses shall be protected by methods that minimize flood damage during the base flood, including measures to allow floodwaters to enter and exit, use of flood damage-resistant materials, and elevation of electric service and equipment to the extent practical given the use of the building.

ARTICLE V

Requirements in Flood Hazard Areas

83.5.1. General Requirements.

In addition to the general requirements of Section 83.4.0, the requirements of this section shall:

(A) Apply in flood hazard areas, including special flood hazard areas along nontidal waters of the State.

(B) Apply to all development, new construction, substantial improvements (including repair of substantial damage), and placement, replacement, and substantial improvement (including repair of substantial damage) of manufactured homes.

83.5.2. Flood Protection Setbacks.

Within areas defined by flood protection setbacks along nontidal waters of the State:

(A) No new buildings, structures, or other development shall be permitted unless the applicant demonstrates that the site cannot be developed without such encroachment into the flood protection setback and the encroachment is the minimum necessary after consideration of varying other siting standards such as side, front, and back lot line setbacks.

(B) Disturbance of natural vegetation shall be minimized and any disturbance allowed shall be vegetatively stabilized.

(C) Public works and temporary construction may be permitted.

83.5.3. Development that Affects Flood-Carrying Capacity of Nontidal Waters of the State.

(A) Development in Designated Floodways

For proposed development that will encroach into a designated floodway, Section 83.3.5(A)(7) requires the applicant to submit an evaluation of alternatives to such encroachment, including different uses of the site or the portion of the site within the floodway, and minimization of such encroachment. This requirement does not apply to fences that do not block the flow of floodwaters or trap debris.

Proposed development in a designated floodway may be permitted only if:

(1) The applicant has been issued a permit by MDE; and

(2) The applicant has developed hydrologic and hydraulic engineering analyses and technical data prepared by a licensed professional engineer reflecting such changes, and the analyses, which shall be submitted to the Floodplain Administrator, demonstrate that the proposed activity will not result in any increase in the base flood elevation; or

(3) If the analyses demonstrate that the proposed activities will result in an increase in the base flood elevation, the applicant has obtained a Conditional Letter of Map Revision or Letter of Map Revision from FEMA. Submittal requirements and fees shall be the responsibility of the applicant.

(B) Development that Includes the Placement of Fill in Nontidal Waters of the State

For proposed development that includes the placement of fill in nontidal waters of the State, other than development that is subject to paragraph (D), a hydraulically-equivalent volume of excavation is required. Such excavations shall be designed to drain freely.

(C) Development in Areas with Base Flood Elevations but No Designated Floodways

For development in special flood hazard areas of nontidal waters of the State with base flood elevations but no designated floodways:

(1) The applicant shall develop hydrologic and hydraulic engineering analyses and technical data reflecting the proposed activity and shall submit such technical data to the Floodplain Administrator as required in Section 83.3.5(A)(6). The analyses shall be prepared by a licensed professional engineer in a format required by FEMA for a Conditional Letter of Map Revision or Letter of Map Revision. Submittal requirements and fees shall be the responsibility of the applicant.

(2) The proposed development may be permitted if the applicant has received a permit by MDE and if the analyses demonstrate that the cumulative effect of the proposed development, when combined with all other existing and potential flood hazard area encroachments will not increase the base flood elevation more than 1.0 foot at any point.

(D) Construction of Roads, Bridges, Culverts, Dams and In-Stream Ponds

Construction of roads, bridges, culverts, dams, and in-stream ponds in nontidal waters of the State shall not be approved unless they comply with this section and the applicant has received a permit from MDE.

(E) Alteration of a Watercourse

For any proposed development that involves alteration of a watercourse not subject to paragraph (C), unless waived by MDE, the applicant shall develop hydrologic and hydraulic engineering analyses and technical data reflecting such changes, including the floodway analysis required in Section 83.3.5(A), and submit such technical data to the Floodplain Administrator and to FEMA. The analyses shall be prepared by a licensed professional engineer in a format required by MDE and by FEMA for a Conditional Letter of Map Revision or Letter of Map Revision. Submittal requirements and fees shall be the responsibility of the applicant.

Alteration of a watercourse may be permitted only upon submission, by the applicant, of the following:

(1) A description of the extent to which the watercourse will be altered or relocated;

(2) A certification by a licensed professional engineer that the flood-carrying capacity of the watercourse will not be diminished;

(3) Evidence that adjacent communities, the U.S. Army Corps of Engineers, and MDE have been notified of the proposal, and evidence that such notifications have been submitted to FEMA; and

(4) Evidence that the applicant shall be responsible for providing the necessary maintenance for the altered or relocated portion of the watercourse so that the flood carrying capacity will not be diminished. The Floodplain Administrator may require the applicant to enter into an agreement with the City of Westminster specifying the maintenance responsibilities; if an agreement is required, the permit shall be conditioned to require that the agreement be recorded on the deed of the property which shall be binding on future owners.

83.5.4. Residential Structures and Residential Portions of Mixed Use Structures.

New residential structures and residential portions of mixed use structures, and substantial improvement (including repair of substantial damage) of existing residential structures and residential portions of mixed use structures shall comply with the applicable requirements of Section 4.0 and this section. See Section 83.5.6 for requirements for horizontal additions.

(A) Elevation Requirements

(1) Lowest floors shall be elevated to or above the flood protection elevation.

(2) In areas of shallow flooding (Zone AO), the lowest floor (including basement) shall be elevated at least as high above the highest adjacent grade as the depth number specified in feet on the FIRM plus two (2) feet, or at least four (4) feet if a depth number is not specified.

(3) Enclosures below the lowest floor shall meet the requirements of paragraph (C).

(B) Limitations on Use of Fill to Elevate Structures

Unless otherwise restricted by these regulations, especially by the limitations in Section 83.5.3(A), Section 83.5.3(B), and Section 83.5.3(C), fill placed for the purpose of raising the ground level to support a building or structure shall:

(1) Consist of earthen soil or rock materials only.

(2) Extend laterally from the building footprint to provide for adequate access as a function of use; the Floodplain Administrator may seek advice from the State Fire Marshal's Office and/or the local fire services agency;

(3) Comply with the requirements of the building code and be placed and compacted to provide for stability under conditions of rising and falling floodwaters and resistance to erosion, scour, and settling;

(4) Be sloped no steeper than one (1) vertical to two (2) horizontal, unless approved by the Floodplain Administrator;

(5) Be protected from erosion associated with expected velocities during the occurrence of the base flood; unless approved by the Floodplain Administrator, fill slopes shall be protected by vegetation if the expected velocity is less than five feet per second, and by other means if the expected velocity is five feet per second or more; and

(6) Be designed with provisions for adequate drainage and no adverse effect on adjacent properties.

(C) Enclosures Below the Lowest Floor

(1) Enclosures below the lowest floor shall be used solely for parking of vehicles, building access, crawl/underfloor spaces, or limited storage.

(2) Enclosures below the lowest floor shall be constructed using flood damage-resistant materials.

(3) Enclosures below the lowest floor shall be provided with flood openings which shall meet the following criteria: [Note: See NFIP Technical Bulletin #1, "Openings in Foundation Walls and Walls of Enclosures Below Elevated Buildings."]

(a) There shall be a minimum of two flood openings on different sides of each enclosed area; if a building has more than one enclosure below the lowest floor, each such enclosure shall have flood openings on exterior walls.

(b) The total net area of all flood openings shall be at least 1 square inch for each square foot of enclosed area (non-engineered flood openings), or the flood openings shall be engineered flood openings that are designed and certified by a licensed professional engineer to automatically allow entry and exit of floodwaters; the certification requirement may be satisfied by an individual certification or an Evaluation Report issued by the ICC Evaluation Service, Inc.

(c) The bottom of each flood opening shall be 1 foot or less above the higher of the interior floor or grade, or the exterior grade, immediately below the opening.

(d) Any louvers, screens or other covers for the flood openings shall allow the automatic flow of floodwaters into and out of the enclosed area.

(e) If installed in doors, flood openings that meet requirements of paragraphs (a) through (d), are acceptable; however, doors without installed flood openings do not meet the requirements of this section.

83.5.5. Nonresidential Structures and Nonresidential Portions of Mixed Use Structures.

New nonresidential structures and nonresidential portions of mixed use structures, and substantial improvement (including repair of substantial damage) of existing nonresidential structures and nonresidential portions of mixed use structures shall comply with the applicable requirements of Section 83.4.0 and the requirements of this section. See Section 83.5.6 for requirements for horizontal additions.

(A) Elevation Requirements

Elevated structures shall:

(1) Have the lowest floor (including basement) elevated to or above the flood protection elevation; or

(2) In areas of shallow flooding (Zone AO), have the lowest floor (including basement) elevated at least as high above the highest adjacent grade as the depth number specified in feet on the FIRM plus two (2) feet, or at least four (4) feet if a depth number is not specified; and

(3) Have enclosures below the lowest floor, if any, that comply with the requirements of Section 83.5.4(C); or

(4) If proposed to be elevated on fill, meet the limitations on fill in Section 83.5.4(B).

(B) **Floodproofing Requirements**

(1) Floodproofing of new nonresidential buildings is not allowed in nontidal waters of the State (COMAR 26.17.04.11(B)(7)).

(2) Floodproofing for substantial improvement of nonresidential buildings is allowed in nontidal waters of the State.

(3) If floodproofing is proposed, structures shall:

(a) Be designed to be dry floodproofed such that the building or structure is watertight with walls and floors substantially impermeable to the passage of water to the level of the flood protection elevation plus 1.0 foot, or

(b) If located in an area of shallow flooding (Zone AO), be dry floodproofed at least as high above the highest adjacent grade as the depth number

specified on the FIRM plus three (3) feet, or at least five (5) feet if a depth number is not specified; and

(c) Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy;

(d) Have floodproofing measures that are designed taking into consideration the nature of flood-related hazards; frequency, depth and duration of flooding; rate of rise and fall of floodwater; soil characteristics; flood-borne debris; at least 12 hours of flood warning time from a credible source; and time necessary to implement any measures that require human intervention;

(e) Have at least one door above the applicable flood elevation that allows human ingress and egress during conditions of flooding;

(f) Have an operations and maintenance plan that is filed with local emergency management officials and that specifies the owner/occupant's responsibilities to monitor flood potential; the location of any shields, doors, closures, tools, or other goods that are required for implementation; maintenance of such goods; methods of installation; and periodic inspection; and

(g) Be certified by a licensed professional engineer or licensed architect, through execution of a Floodproofing Certificate that states that the design and methods of construction meet the requirements of this section. The Floodproofing Certificate shall be submitted with the construction drawings as required in Section 83.3.5(A)(13).

83.5.6. Horizontal Additions.

(A) A horizontal addition proposed for a building or structure that was constructed after the date specified in Section 83.1.1 shall comply with the applicable requirements of Section 83.4.0 and this section.

(B) In nontidal waters of the State that are subject to the regulatory authority of MDE, all horizontal additions shall comply with the applicable requirements of Section 83.4.0 and this section and:

(1) If the addition is structurally connected to the base building, the requirements of paragraph (C) apply.

(2) If the addition has an independent foundation and is not structurally connected to the base building and the common wall with the base building is modified by

no more than a doorway, the base building is not required to be brought into compliance.

(C) For horizontal additions that are structurally connected to the base building:

(1) If the addition combined with other proposed repairs, alterations, or modifications of the base building constitutes substantial improvement, the base building and the addition shall comply with the applicable requirements of Section 83.4.0 and this section.

(2) If the addition constitutes substantial improvement, the base building and the addition shall comply with all of the applicable requirements of Section 83.4.0 and this section.

(D) For horizontal additions with independent foundations that are not structurally connected to the base building and the common wall with the base building is modified by no more than a doorway, the base building is not required to be brought into compliance.

83.5.7. Accessory Structures.

(A) Accessory structures shall be limited to no more than 250 square feet in floor area and $10,000 in value.

(B) Accessory structures shall comply with the elevation requirements and other requirements of Section 83.5.4, the floodproofing requirements of Section 83.5.5(B), or shall:

(1) Be useable only for parking of vehicles or limited storage;

(2) Be constructed with flood damage-resistant materials below the base flood elevation;

(3) Be constructed and placed to offer the minimum resistance to the flow of floodwaters;

(4) Be anchored to prevent flotation;

(5) Have electrical service and mechanical equipment elevated to or above the base flood elevation; and

(6) Have flood openings that meet the requirements of Section 83.5.4(C).

ARTICLE VI

Variances

83.6.1. General.

The Mayor and Common Council shall have the power to consider and authorize or deny variances from the strict application of the requirements of these regulations. A variance shall be approved only if it is determined to not be contrary to the public interest and where, owing to special conditions of the lot or parcel, a literal enforcement of the provisions of these regulations, an unnecessary hardship would result.

Upon consideration of the purposes of these regulations, the individual circumstances, and the considerations and limitations of this section, the Mayor and Common Council may attach such conditions to variances as it deems necessary to further the purposes of these regulations.

The Mayor and Common Council shall notify, in writing, any applicant to whom a variance is granted to construct or substantially improve a building or structure with its lowest floor below the elevation required by these regulations that the variance is to the floodplain management requirements of these regulations only, and that the cost of Federal flood insurance will be commensurate with the increased risk, with rates up to $25 per $100 of insurance coverage.

A record of all variance actions, including justification for issuance shall be maintained pursuant to Section 83.3.2(J) of these regulations.

83.6.2. Application for a Variance.

(A) The owner of property, or the owner's authorized agent, for which a variance is sought shall submit an application for a variance to the Floodplain Administrator.

(B) At a minimum, the application shall contain the following information: name, address, and telephone number of the applicant and property owner; legal description of the property; parcel map; description of the existing use; description of the proposed use; site map showing the location of flood hazard areas, designated floodway boundaries, flood zones, base flood elevations, and flood protection setbacks; description of the variance sought; and reason for the variance request. Variance applications shall specifically address each of the considerations in Section 83.6.3.

(C) If the application is for a variance to allow the lowest floor of a building or structure below the applicable minimum elevation required by these regulations, the application shall include a statement signed by the owner that, if granted, the conditions of the variance shall be recorded on the deed of the property.

(D) If the application is for a variance for a historic structure pursuant to Section 83.4.6 of these regulations, the application shall contain documentation that the proposed work does not preclude the structure's continued eligibility and designation as a historic structure. The documentation shall be obtained from a source that is authorized to make such determinations (see definition of "Historic Structure").

83.6.3. Considerations for Variances.

The Floodplain Administrator shall request comments on variance applications from MDE (NFIP State Coordinator) and shall provide such comments to the Mayor and Common Council.

In considering variance applications, the Mayor and Common Council shall consider and make findings of fact on all evaluations, all relevant factors, requirements specified in other sections of these regulations, and the following factors:

(A) The danger that materials may be swept onto other lands to the injury of others.

(B) The danger to life and property due to flooding or erosion damage.

(C) The susceptibility of the proposed development and its contents (if applicable) to flood damage and the effect of such damage on the individual owner.

(D) The importance of the services to the community provided by the proposed development.

(E) The availability of alternative locations for the proposed use which are not subject to, or are subject to less, flooding or erosion damage.

(F) The necessity to the facility of a waterfront location, where applicable, or if the facility is a functionally dependent use.

(G) The compatibility of the proposed use with existing and anticipated development.

(H) The relationship of the proposed use to the comprehensive plan for that area.

(I) The safety of access to the property in times of flood for passenger vehicles and emergency vehicles.

(J) The expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site.

(K) The costs of providing government 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.

(L) The comments provided by MDE (NFIP State Coordinator).

83.6.4. Limitations for Granting Variances.

The Mayor and Common Council shall make an affirmative decision on a variance request only upon:

(A) A showing of good and sufficient cause.

(B) A determination that failure to grant the variance would result in exceptional hardship due to the physical characteristics of the property. Increased cost or inconvenience of meeting the requirements of these regulations does not constitute an exceptional hardship to the applicant.

(C) A determination that the granting of a variance for development within any designated floodway, or flood hazard area with base flood elevations but no designated floodway, will not result in increased flood heights beyond that which is allowed in these regulations.

(D) A determination that the granting of a variance will not result in additional threats to public safety; extraordinary public expense, nuisances, fraud or victimization of the public, or conflict with existing local laws.

(E) A determination that the building, structure or other development is protected by methods to minimize flood damages.

(F) A determination that the variance is the minimum necessary to afford relief, considering the flood hazard.

ARTICLE VII

Enforcement

83.7.1. Compliance Required.

(A) No building, structure or development shall hereafter be located, erected, constructed, reconstructed, improved, repaired, extended, converted, enlarged or altered without full compliance with these regulations and all other applicable regulations.

(B) Failure to obtain a permit shall be a violation of these regulations and shall be subject to penalties in accordance with Section 83.7.3.

(C) Permits issued on the basis of plans and applications approved by the Floodplain Administrator authorize only the specific activities set forth in such approved plans and applications or amendments thereto. Use, arrangement, or construction of such specific activities that are contrary to that authorization shall be deemed a violation of these regulations.

83.7.2. Notice of Violation and Stop Work Order.

If the Floodplain Administrator determines that there has been a violation of any provision of these regulations, the Floodplain Administrator shall give notice of such violation to the owner, the owner's authorized agent, and the person responsible for such violation, and may issue a stop work order. The notice of violation or stop work order shall be in writing and shall:

(A) Include a list of violations, referring to the section or sections of these regulations that have been violated;

(B) Order remedial action which, if taken, will effect compliance with the provisions of these regulations;

(C) Specify a reasonable period of time to correct the violation;

(D) Advise the recipients of the right to appeal; and

(E) Be served in person; or

(F) Be posted in a conspicuous place in or on the property and sent by registered or certified mail to the last known mailing address, residence, or place of business of the recipients.

83.7.3. Violations and Penalties.

Any person who shall violate a provision of this chapter, or fail to comply therewith, or with any of the requirements thereof, shall be prosecuted within the limits provide State or local law. Each day that a violation continues shall be a separate offense. In addition to other remedies, any violation may be deemed a municipal infraction and prosecuted as such. The penalty for violation shall be a fine of $400 for each offense, which may be doubled in accordance with applicable law. The total civil penalty may exceed $10,000. The penalties provided herein are in addition to those provided in §5-805 of the Environment Article of the Annotated Code of Maryland.

The imposition of a fine or penalty for any violation of or non-compliance with this chapter shall not excuse the violation or non-compliance or permit it to continue, and all such person shall be required to correct or remedy such violations and non-compliance with a reasonable time.

Any structure constructed, or reconstructed, enlarge, altered, or relocated in non-compliance with this chapter shall be declared by the Mayor and Common Council to be a public nuisance and abatable as such.

Additionally, the Mayor and Common Council may institute injunctive, mandamus or other appropriate action or proceedings at law or equity for the enforcement of this chapter or to correct violations of this chapter, and any court of competent jurisdiction shall have the right to issue restraining orders, temporary or permanent, injunctions or mandamus or other appropriate forms of remedy or relief.

ARTICLE VIII

Record-Keeping

83.8.1. Record-Keeping.

A record of all approvals, disapprovals, and variances granted under the provisions of this chapter shall be maintained by the Director.

The Director shall maintain a record of all floodplain permits granted under this chapter.

All records shall be available for inspection upon request and shall contain all documents needed to support any permit action.

ARTICLE IX

Fees

83.9.1. Fees.

Administrative fees may be charged at the time of applications as determined from time to time by resolution of The Mayor and Common Council. Said fees shall be commensurate with those costs incurred in the processing, review and evaluation of permit application for development in the floodplain district. Such costs may include, but are not limited to, consultant fees for the certification of as-built condition of structures, floodplain delineations, environmental impact characterizations, staff assignments, attorneys feed and other related costs. In that connection, the City may engage and/or hire agents, consultants, registered engineers, attorneys and others with regard to the requirements of this chapter and may assess the charges and expenses association therewith to the applicant as a part of the administrative fees.

ARTICLE X

Subsequent Amendments

83.10.1. Subsequent Amendments

All ordinances or parts of ordinances that are inconsistent with the provisions of this ordinance are hereby repealed to the extent of such inconsistency. This ordinance shall be amended as required by the Federal Emergency Management Agency, 44 Code of Federal Regulations. All subsequent amendments to this ordinance are subject to the approval of the Federal Emergency Management Agency and the Maryland Department of the Environment.

Section 2. Wherever the provision of any statute, law or ordinance require more stringent or higher standards than are required by the provisions of this chapter, the provisions of any existing statute, law or ordinance shall govern.

Section 3. All ordinances or parts of ordinances in conflict or inconsistent with the provisions of this Ordinance, are hereby repealed to the extent of such conflict or inconsistency.

Section 4. This Ordinance shall be applicable to any development activity and any building permit, site plan or subdivision application submitted on or after the effective date of this Ordinance. This Ordinance shall be application to any site plan, or amendment thereto, which has not received final approval of the City of Westminster Planning and Zoning Commission on or before the effective date of this Ordinance. Any prior development project will continue to be regulated under the standards set forth in Ordinance No. 747 as if it were still in effect.

Section 5. This Ordinance will take effect January 1, 2011.

INTRODUCED this 8th day of NOVEMBER, 2010.

Margaret L Wolf
Margaret Wolf, City Administrator

PASSED this 22nd day of NOVEMBER, 2010.

Margaret L Wolf
Margaret Wolf, City Adminstrator

APPROVED this 22nd day of NOVEMBER, 2010.

Kevin R. Utz, Mayor

Approved as to form and legal sufficiency this 22nd day of November, 2010.

Elissa Levan
City Attorney