

## **ORDINANCE No. 06-18**

AN ORDINANCE AMENDING REGULATIONS IN CHAPTERS 6 AND 34 OF THE TOWN OF FORT MYERS BEACH LAND DEVELOPMENT CODE; PROVIDING AUTHORITY; ADOPTING AMENDMENTS TO CHAPTER 6 OF THE LAND DEVELOPMENT CODE WHICH IS TITLED “MAINTENANCE CODES, BUILDING CODES, AND COASTAL REGULATIONS”; AMENDING SECTION 6-405 “DEFINITIONS”; AMENDING SECTION 6-441 “DESIGNATION OF ADMINISTRATOR”; AMENDING SECTION 6-444 “APPLICATIONS AND CERTIFICATIONS”; AMENDING SECTION 6-472 “SPECIFIC STANDARDS”; ADOPTING AMENDMENTS TO CHAPTER 34 OF THE LAND DEVELOPMENT CODE WHICH IS TITLED “ZONING DISTRICTS, DESIGN STANDARDS, AND NONCONFORMITIES”; AMENDING SECTION 34-631 “BUILDING HEIGHTS”; PROVIDING SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE.

### **IT IS HEREBY ORDAINED BY THE TOWN OF FORT MYERS BEACH AS FOLLOWS:**

**SECTION 1. AUTHORITY.** This Ordinance is enacted pursuant to the provisions of Chapter 95-494, Laws of Florida, Chapters 163 and 166, Florida Statutes, and other applicable provisions of law.

**SECTION 2. ADOPTION OF AMENDMENTS TO CHAPTER 6 OF THE LAND DEVELOPMENT CODE.** Chapter 6 of the Town of Fort Myers Beach land development code is titled “Maintenance Codes, Building Codes, and Coastal Regulations.” Chapter 6 is hereby amended as shown in Exhibit A. Entirely new language is indicated with underlining. Language being repealed from the existing code is indicated with ~~strike-throughs~~. Existing language being retained is either omitted entirely or is shown without underlining or strike-throughs. This ordinance amends the following sections of Chapter 6:

- Sec. 6-405. Definitions.
- Sec. 6-441. Designation of administrator.
- Sec. 6-444. Applications and certifications.
- Sec. 6-472. Specific standards.

**SECTION 3. ADOPTION OF AMENDMENTS TO CHAPTER 34 OF THE LAND DEVELOPMENT CODE.** Chapter 34 of the Town of Fort Myers Beach land development code is titled “ZONING DISTRICTS, DESIGN STANDARDS, AND NONCONFORMITIES.” Chapter 34s hereby amended as shown in Exhibit B. Entirely new language is indicated with underlining. Language being repealed from the existing code is indicated with ~~strike-throughs~~. Existing language being retained is either omitted entirely or is shown without underlining or strike-throughs. This ordinance amends the following section of Chapter 34:

- Sec. 34-631. Building heights.

**SECTION 4. SEVERABILITY.** If any one of the provisions of this ordinance should be held contrary to any express provision of law, or contrary to the policy of express law although not expressly prohibited, or against public policy, or for any reason whatsoever be held invalid, then such provision shall be null and void and shall be deemed separate from the remaining provisions of this ordinance, and in no way shall affect the validity of all other provisions of this ordinance.

**SECTION 5. EFFECTIVE DATE.** This ordinance shall take effect immediately upon its adoption.

The foregoing ordinance was enacted by the Town Council upon a motion by Council Member Reynolds and seconded by Vice-Mayor Massucco and, upon being put to a vote, the result was as follows:

Mayor Dennis Boback	Aye
Vice-Mayor Don Massucco	Aye
Charles Meador, Jr.	Aye
Garr Reynolds	Aye
William Shenko, Jr.	Aye

DULY PASSED AND ENACTED this 11<sup>th</sup> day of December, 2006.

ATTEST:

TOWN OF FORT MYERS BEACH

By: \_\_\_\_\_  
Michelle Mayher, Town Clerk

By: \_\_\_\_\_  
Dennis Boback, Mayor

Approved as to form by:

\_\_\_\_\_  
Anne Dalton, Town Attorney

# EXHIBIT A

## FORT MYERS BEACH LAND DEVELOPMENT CODE

### CHAPTER 6 — MAINTENANCE CODES, BUILDING CODES, AND COASTAL REGULATIONS

#### ARTICLE IV. FLOODPLAIN REGULATIONS

##### DIVISION 1. GENERALLY

###### Sec. 6-405. Definitions.

The following words, terms, and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning. Unless specifically defined in this section, words or phrases used in this article shall be interpreted so as to give them the meanings they have in common usage and to give this article its most reasonable application.

**Base flood** means the flood having a one percent chance of being equaled or exceeded in any given year, as determined by the maps described in § 6-408.

**Floor** means the top surface of an enclosed space area in a building, i.e., top of slab in concrete slab construction or top of wood flooring in wood frame construction. The term does not include the floor of a garage used for parking vehicles.

**Highest adjacent grade** means the highest ~~natural~~ elevation of the ground surface, either prior to or after construction whichever is higher, next to the proposed walls of a structure.

**Lowest floor** means the lowest floor of the lowest enclosed space area, including any floors below grade. An unfinished or flood resistant enclosure, used solely for parking of vehicles, building access, or storage, is not considered a building's lowest floor provided that such enclosure is not built so as

to render the structure in violation of the non-elevation design requirements of this article.

**Market value of the structure**, depending on the context, means either:

(1) the value of the structure prior to the start of the improvement, or

(2) in the case of damage, the value of the structure prior to the damage occurring.

Value will be as determined (for the structure only) by the Lee County Property Appraiser, by a private appraisal acceptable to the coordinator, or by an independent appraisal commissioned by the coordinator. This value shall not include the value of the land on which the structure is located, nor the value of other structures or site improvements on the site, nor the value of the structure after the proposed improvements are completed. Any proposed value submitted via private appraisal that exceeds the Property Appraiser's valuation by more than 35 percent shall be subject to peer review by a qualified local appraiser or a new independent appraisal, to be commissioned by the coordinator, with the full cost of the review or new appraisal paid by the applicant to the town prior to initiation of the process. In lieu of submitting a private appraisal, an applicant may obtain an independent appraisal through the coordinator, with the full cost paid to the town prior to initiation of the process.

[no other changes to this section]

**DIVISION 2. ADMINISTRATION**

**Sec. 6-441. Designation of administrator.**

~~Lee County's~~ The town manager shall designate a flood insurance coordinator (“coordinator”) is hereby appointed to administer and implement the provisions of this article on behalf of the Town of Fort Myers Beach.

coordinator within 30 days to document the results of the test and set forth any corrective measures that may be necessary, including proposed revisions to the operation and maintenance plan as to responsibility for maintenance, installation, and storage of flood barriers.

(b) *[no further changes to this section]*

**Sec. 6-444. Applications and certifications.**

(a) The provisions of this article will be enforced concurrently with review of proposed building permits and development orders. No separate application is required. However, the following information is required on the plans submitted for review:

- (1) Elevation, in relation to mean sea level, of the proposed lowest floor of all structures;
- (2) Elevation in relation to mean sea level to which any nonresidential structure will be floodproofed;
- (3) A certificate from a registered professional engineer or architect that the nonresidential floodproofed structure meets the floodproofing criteria in § 6-472, when dry or wet floodproofing is proposed; and
- (4) An operation and maintenance plan when dry floodproofing is proposed:
  - a. At a minimum this plan must identify who is responsible for maintenance and installation of the flood barriers that will protect wall and door openings and where the flood barriers will be stored when not in use.
  - b. This plan must also provide a realistic estimate of the manpower, time, and equipment required for installation.
  - c. This plan must also include a binding requirement commitment for present and future owners to conduct a test installation before May 31 of each year annually of all flood barriers, with 10 days’ advance written notice provided to the ~~coordinator~~ and the town manager to allow the manager or coordinator ~~them~~ to witness this test.
  - d. The plan must also include a binding requirement tghat upon completion of each annual test, a written report will be submitted by the owners to the

**DIVISION 3. STANDARDS**

**Sec. 6-472. Specific standards.**

The following specific standards must be followed within the Town of Fort Myers Beach:

- (1) **Conventional residential construction.** New construction or substantial improvement of any residential structure shall have the lowest floor elevated to or above the base flood elevation. Space below the base flood elevation in A zones is regulated ~~Should solid foundation perimeter walls be used to elevate a structure, openings sufficient to facilitate the unimpeded movements of floodwaters shall be provided~~ in accordance with standards of subsection (5) of this section. (See subsection (7) for additional restrictions in V zones.)
  - a. When an improvement to an existing residential structure involves reconstruction or includes an addition, and the improvement’s cost exceeds the 50 percent threshold in this article’s definition of “substantial improvement,” then the reconstruction or addition shall be elevated the same as new construction, with its lowest floor elevated to or above the base flood elevation.
  - b. When such an improvement does not exceed the 50 percent threshold, any additional enclosed floor space must be elevated to or above the structure’s existing lowest floor.
- (2) **Manufactured homes.** New or expanded parks or subdivisions for manufactured homes are not allowed in the Town of Fort Myers Beach. Where zoning allows existing manufactured homes to be replaced or substantially improved:
  - a. on individual subdivision lots, replacement or substantially improved manufactured homes must be elevated so that the lowest floor of the manufactured home is at or above the base flood elevation and in compliance with the anchoring requirements of § 6-471(2), or
  - b. on an existing site in a mobile home park, the manufactured home chassis must be supported by reinforced piers, or other foundation elements of at least equivalent

strength, that are no less than 36 inches in height above highest adjacent grade, and the manufactured home shall comply with the anchoring requirements of § 6-471(2). However, ~~the this~~ 36-inch alternative ~~in subsection (2)b.~~ may not be used if a manufactured home on that specific site has incurred “substantial damage” from flooding, as defined in this article; if “substantial damage” has occurred, the manufactured home or a replacement manufactured home on that site must be elevated so that the lowest floor is at or above the base flood elevation and in compliance with the anchoring requirements of § 6-471(2).

- (3) **Recreational vehicles.** New parks or subdivisions for recreational vehicles are not allowed in the Town of Fort Myers Beach. Where zoning allows recreational vehicles to be placed or substantially improved on a site located in an existing recreational vehicle park, they must be either:
  - a. placed on the site for fewer than 180 consecutive days and fully licensed and ready for highway use (a recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick-disconnect type utilities and security devices, and has no permanently attached additions); or
  - b. elevated so that the lowest floor of the recreational vehicle is at or above the base flood elevation and in compliance with the anchoring requirements of § 6-471(2).

- (4) **Nonresidential construction.** New construction or substantial improvement of any commercial or other nonresidential structure shall either:
- a. have the lowest floor elevated to or above the base flood elevation, or,
  - b. together with attendant utility and sanitary facilities, be dry-floodproofed so that below the base flood level the structure is 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.
    1. Dry-floodproofing up to the base flood elevation is the preferred alternative for providing sidewalk-level commercial space in the Future Land Use Map's Pedestrian Commercial category, except in V zones where dry-floodproofing is not permitted (see § 6-472(7)).
    2. A registered professional engineer or architect shall develop and/or review the structural design, specifications, and plans and shall certify that they meet the dry-floodproofing standards of this subsection and the accepted standards of practice for meeting the applicable provisions of 44 CFR 60.3(c)(3)ii. are satisfied. Such certification shall be provided to the coordinator, who will maintain a public record at town hall of all such certifications.
    3. An operation and maintenance plan must be submitted in accordance with § 6-444(a)(4). Failure to conduct the annual test installation or submit the annual report required by this plan shall subject the owner to the code enforcement mechanisms provided in this code (for example, § 1-5, or article V of ch. 2) after 30 days' prior written notice sent via certified mail, return receipt requested.
  - c. No person may undertake construct a series of improvements, additions, and/or demolitions that connects two or more existing structures in a manner that evades the requirement to either elevate or dry-floodproof new construction or substantial improvements to nonresidential structures.

- (5) **Space below elevated buildings (A zones).** New construction or substantial improvements of elevated buildings, both residential and non-residential, may contain enclosed or unenclosed space below the base flood elevation provided it that is usable solely for parking, building access, or storage (additional restrictions for coastal high-hazard areas are provided in subsection (7) below).
- ~~a. The amount of such space is limited only by setback and other regulations of ch. 34 provided the space is not enclosed or is enclosed only by latticework or decorative screening with less than 50 percent solid surfaces. This 50 percent enclosure rule can also be met with full-height solid walls that enclose no more than 50 percent of the perimeter of the floor area, or with partial-height solid walls that extend less than 50 percent of the height of all walls, or any equivalent combination. For purposes of this rule, operable doors and windows shall be considered solid surfaces.~~
    - a. Enclosed space below the base flood elevation can include up to 100 percent of the space below an elevated building but cannot extend beyond the perimeter of the elevated structure.
    - b. ~~In addition to the unenclosed or 50 percent enclosed space described in subsection a.,~~ Partially or fully enclosed space below the base flood elevation, may includeing garages, and fully enclosed areas formed by exterior walls provided that this space is must be wet-floodproofed, designed to preclude finished living space in the area below the base flood elevation, and designed to allow for the entry and exit of floodwaters to automatically equalize hydrostatic flood forces on such exterior walls below the base flood elevation. Fully enclosed areas must comply with all setback requirements for the zoning district in which located. Fully enclosed space below the base flood elevation cannot extend beyond the perimeter of the elevated structure.
    - c. The following requirements apply to all new construction and substantial

improvements below elevated buildings in A zones:

1. Designs for complying with ~~this~~ these requirements must meet the following minimum criteria or either be certified by a registered professional engineer or architect as providing equivalent automatic equalization of hydrostatic flood forces; , or meet the following minimum criteria:
  - a- A minimum of two openings shall be provided for any enclosed space having a total net area of not less than one square inch for every square foot of enclosed space area subject to flooding;
  - b- The bottom of all openings shall be no higher than one foot above highest adjacent grade; and
  - c- Openings may be equipped with screens, louvers, valves, or other coverings or devices provided they permit the automatic flow of floodwaters in both directions.

Technical guidance in meeting these requirements may be found in FEMA's Technical Bulletin 1-93.
2. Electrical, plumbing, and other utility connections ~~are prohibited~~ below the base flood elevation must be designed and constructed so that floodwaters cannot infiltrate or accumulate within the component or group of components. Technical guidance in meeting these requirements may be found in Protecting Building Utilities From Flood Damage, FEMA Publication 348.
3. Access to the enclosed space below elevated buildings area shall be the minimum necessary to allow for:
  - a- Parking of vehicles (garage or other overhead doors), and
  - b- External entries including access for limited storage of maintenance equipment used in connection with the premises. (no more than one (standard exterior door with no more than a single door opening of up to 36

inches in each of the four exterior walls any single wall segment, or windowless double exterior doors with no more than 72 inches of opening in each exterior any single wall segment), plus and

- c- Internal entry doors to the living space area (access to stairway or elevator from parking and/or storage space).
4. The interior portion of ~~such any~~ enclosed space below elevated buildings may area shall not be ~~partitioned~~; temperature-controlled; ~~or finished into separate rooms and~~ must be constructed and finished only with wall, floor, and ceiling materials that comply with all provisions of § 6-472(5). Interior partitions are limited to separating parking spaces from building access or storage spaces.
5. All structural and non-structural components must be constructed of materials that are durable, resistant to flood forces, and resistant to deterioration caused by repeated inundation by flood water. Technical guidance in meeting this requirement may be found in FEMA's Technical Bulletin 2-93. Technical guidance in meeting this requirement for elevators may be found in FEMA's Technical Bulletin 4-93.
6. These provisions apply to space below the base flood elevation to be used for parking, building access, or storage. Other uses proposed for wet-floodproofed space may be approved by variance as provided in § 6-446(e). Examples could , and may include functionally dependent facilities, historic buildings, and utility structures.
7. Any application for a garage or other fully enclosed space area formed by exterior walls below the base flood elevation must be accompanied by a signed and notarized acknowledgment of the limitations on allowable uses of the enclosed space that applied when building

permits were obtained, using a form provided by the coordinator. This agreement shall be recorded in the official record books in the office of the clerk of the circuit court to provide additional notice of these limitations to future purchasers.

(6) **Accessory structures.** Accessory structures may be exempted from meeting the elevation requirements only if:

- a. The structure is securely anchored to resist flotation or lateral movement and offers the minimum resistance to the flow of floodwaters; and
- b. The total cost of the structure does not exceed \$16,000 ~~or~~ 10% of the market value of the principal building, or the following amounts, whichever is greater:
  - 1. \$16,000 for a single-family dwelling unit or other single unit.
  - 2. \$32,000 for a two-family dwelling unit.
  - 3. \$50,000 for a multiple-family building, hotel/motel, or commercial establishment.

These dollar amounts may be increased each year beginning January 1, 2008 by the percentage increase of the Consumer Price Index—All Urban Consumers (CUP-U), All Items, U.S. City Average (maintained by the Bureau of Labor Statistics); and

- c. The structure is used exclusively for nonhabitable recreational, security, or storage purposes and not used as offices, kitchens, or living space; and
- d. All electrical, air conditioning, or heating equipment is elevated above the base flood elevation or floodproofed in accordance with § 6-472(5)c.2); and
- e. Openings to equalize hydrostatic pressure during a flood are provided in conformance with § 6-472(5)b.1; and
- f. All structural and non-structural components below base flood elevation are constructed of materials that are durable, resistant to flood forces, and resistant to deterioration caused by repeated inundation by flood water. Technical guidance in meeting this requirement may be found in FEMA's Technical Bulletin 2-93.

g. f. For accessory structures located in coastal high-hazard zones (V zones), the following additional requirements also apply:

- 1. Only breakaway walls may be used below the base flood elevation.
- 2. The structure must be constructed with a piling or column foundation system that is adequately embedded to resist scour and lateral deflection.
- 3. Floor slabs may not be structurally attached to pilings or columns and must be located at existing grade.
- 4. The lowest horizontal structural member of roof systems, including plates and beams connecting the pilings or columns, must be placed at or above the base flood elevation.

(7) **Coastal high-hazard areas (V zones).**

Certain areas of the town are designated as coastal high-hazard areas (V zones) because they have special flood hazards associated with wave wash. In V zones, the following additional provisions shall apply to all construction including both residential and commercial buildings:

- a. All new construction shall be located landward of the reach of the mean high tide line and landward of the 1978 coastal construction control line except as provided in § 6-366.
- b. All new construction and substantial improvements shall be elevated so that the lowest supporting horizontal member, excluding pilings or columns, is located at or above the base flood elevation level, with all space below the lowest supporting member open so as not to impede the flow of water. Breakaway walls may be permitted and must be designed to wash away in the event of abnormal wave action in accordance with the remainder of this subsection.
- c. Improvements that do not exceed the 50 percent threshold for being classified as a substantial improvement must have any additional enclosed floor space elevated to or above the structure's existing lowest floor.
- d. All new construction and substantial improvements shall be securely anchored on pilings or columns.

- e. All pilings and columns and the attached structures shall be anchored to resist flotation, collapse, and lateral movement due to the effect of wind and water loads acting simultaneously on all building components. The anchoring and support system shall be designed with wind and water loading values as required by the Florida Building Code and the base flood event respectively, which equal or exceed the 100-year mean recurrence interval (one percent annual chance flood).
- f. Compliance with the provisions contained in subsections (7)b, d, and e of this section shall be certified by a registered professional engineer or architect.
- g. ~~There shall be no~~ The use of fill used as structural support is prohibited.
- h. ~~There shall be no~~ Man-made alterations to sand dunes and mangrove stands that would increase potential flood damage are prohibited.
- i. Nonsupporting breakaway walls, latticework or decorative screening shall be allowed below the base flood elevation provided it is not part of the structural support of the building and is designed so as to break away, under abnormally high tides or wave action, without damage to the structural integrity of the building on which it is to be used, and provided the following design specifications are met:
  1. Design safe loading resistance of each wall shall be not less than ten and not more than 20 pounds per square foot; or
  2. If more than 20 pounds per square foot, a registered professional engineer or architect shall certify that the design wall collapse would result from a water load less than that which would occur during the base flood event, and the elevated portion of the building and supporting foundation system shall not be subject to collapse, displacement or other structural damage due to the effects of wind and water loads acting simultaneously on all building components during the base flood event (structural and nonstructural). Water loading values ~~to be used in this determination~~ shall be those associated with the base flood. ~~each have a one percent chance of being equaled or exceeded in any given year (100-year mean recurrence interval).~~ Wind loading values shall be those required by the Florida Building Code local and state law.
- j. If breakaway walls are utilized, such enclosed space ~~must shall~~ not be used for human habitation, ~~but shall and must~~ be designed to be used only for parking of vehicles, building access, or limited storage of maintenance equipment used in connection with the premises. Space enclosed by latticework and breakaway walls in a V zone is subject to the same limitations as to size, usage, and formal acknowledgments that apply below base flood elevation in an A zone, as provided in subsection (5)~~a. and (5)b.~~ above.
- k. Prior to construction, plans for any structure that will have breakaway walls must be submitted to the coordinator for approval.
- l. Any alteration, repair, reconstruction, or improvement to a structure shall not enclose the space below the lowest floor except with breakaway walls, and except as provided for in the remainder of this subsection.
- m. The placement of manufactured homes is prohibited. A replacement recreational vehicle may be placed in an existing recreational vehicle park, provided the mobility standards of § 6-472(3)a. are met.
- n. Electrical, plumbing, and other utility connections are prohibited below the base flood elevation except where components must be extended below the base flood elevation for service connections or code compliance (such components must be designed and constructed so that floodwaters cannot infiltrate or accumulate within the components). Technical guidance in meeting these requirements may be found in *Protecting Building Utilities From Flood Damage*, FEMA Publication 348.

# EXHIBIT B

## FORT MYERS BEACH LAND DEVELOPMENT CODE

### CHAPTER 34 — ZONING DISTRICTS, DESIGN STANDARDS, AND NONCONFORMITIES

**DIVISION 3. EXPLANATION OF  
PROPERTY DEVELOPMENT  
REGULATIONS FOR  
ALL ZONING DISTRICTS**

**Sec. 34-631. Building heights.**

(a) *Methods of measurement.* Maximum building heights specified in this code are measured in two ways, as shown in Figure 34-1-a. Both measurement methods apply to each building.

- (1) *Measured in stories*, the height includes enclosed or unenclosed space at ground level as the first story, provided it is six feet or more in height.
- a. Space within a roofline that is entirely non-habitable shall not be considered to be a separate story, for example overhead space enclosed by a cathedral ceiling, cupola, or similar roof enclosure.
  - b. Any single story cannot exceed 16 feet in height, including structural members, except that the first story may be taller if required to comply with any regulation in this code.

- (2) *Measured in feet*, the height is the vertical distance between the base flood elevation (BFE), as established by the maps described in ~~§ 6-408~~, and the top of the structural members that serve as the ceiling for the highest habitable story of the building.
- a. Where ceilings are sloped, height is measured to the highest vertical point on a wall of the highest habitable story of the building.
  - b. For parking garages, height is measured to the top of the structural members of the highest ceiling, or if parking is allowed on the roof level, to the highest point on the rooftop parking level.
  - c. When determining maximum building heights only, base flood elevation (BFE), means the minimum required elevation for a property as established by the floodplain maps described in § 6-408, or the minimum 100-year storm elevation as established by the Florida Department of Environmental Protection for structures seaward of the 1991 coastal construction control line, whichever is higher for a particular property.

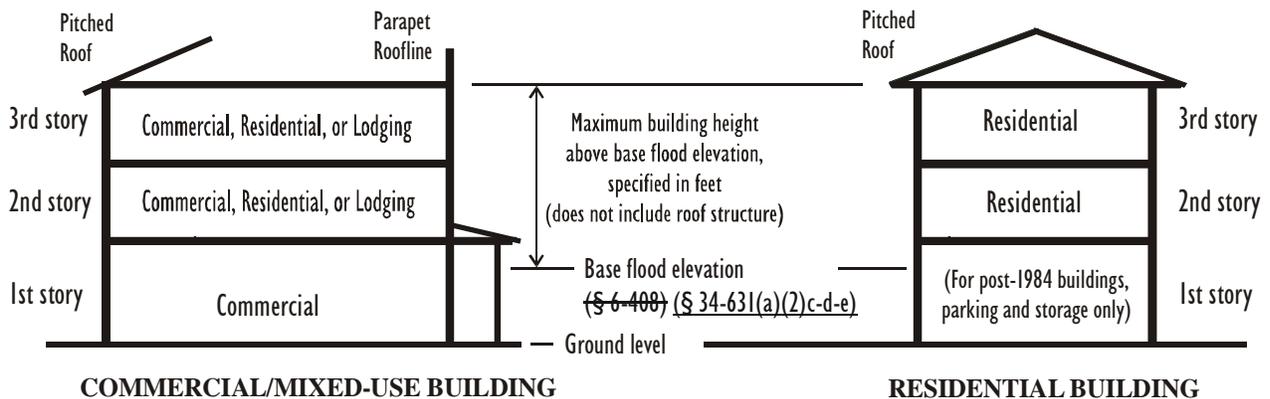


Figure 34-1-a

- d. On July 31, 2006, FEMA released maps showing preliminary BFE increases that could become mandatory in 2007. Landowners who voluntarily meet the higher elevations shown on the preliminary FEMA maps may measure their building's height in feet from the higher elevation.
  - e. Landowners who to choose to elevate up to three feet above the heights in subsections c. or d. above may increase their maximum building height by the same number of feet.
- (3) Specific height regulations are provided for each zoning district.
- a. For conventional zoning districts, see Table 34-3 in division 4 of this chapter.
  - b. For redevelopment zoning districts, see individual districts in division 5 of this chapter.
  - c. For planned development zoning districts, see division 6 of this chapter.

(b) **Exceptions to height regulations.** [no changes proposed]

(c) **Space at ground level.** [no changes proposed]