

## § 15.24 FLOOD HAZARD AREA DEVELOPMENT

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### 15.24.010 STATEMENT OF PURPOSE

The purpose of this ordinance is to ensure public safety; minimize hazards to persons and property from flooding, to protect watercourses from encroachment, and to maintain the capability of floodplains to retain and carry off floodwaters. This chapter and accompanying Flood Insurance Rate Maps (FIRM) assure City of Newport compliance with the requirements of the National Flood Insurance Act of 1968 (P.L. 90-488, as amended).

### 15.24.020 APPLICABILITY

#### A. Special Flood Hazard Areas

The Special Flood Hazard Areas are herein established as a floodplain overlay district. The District includes all special flood hazard areas within the City of Newport designated as Zone A, AE, AH, AO, A99, V, or VE on the Newport County Flood Insurance Rate Map (FIRM) and Digital FIRM issued by the Federal Emergency Management Agency (FEMA) for the administration of the National Flood Insurance Program. The map panels of the Newport County FIRM that are wholly, or partially, within the City of Newport (445403) with panel numbers 0089H, 0093H, 0176H, 0177H, 0178H, 0179H, 0181H, 01783H dated 5 April 2010. The exact boundaries of the District may be defined by the 100-year base flood elevations shown on the FIRM and further defined by the Newport County Flood Insurance Study (FIS) report dated 5 April 2010. The FIRM and FIS report and any revisions thereto are incorporated herein by reference and are on file with the Department of Planning, Zoning, Development, and Inspections.

#### B. Administrative Provisions

**Use Permit.** All proposed construction or other development within a Special Flood Hazard Area shall require a permit from the Department of Planning, Zoning, Development, and Inspections.

If the construction or other development within a Special Flood Hazard Area is not covered by a Building Permit or Development Plan Review application, or if the development, construction, alteration, or land disturbance activities result in land disturbance of greater than ten thousand

(10,000) square feet or said disturbance of soil is within one hundred (100) feet of any watercourse, waterbody, or coastal feature, or where, in the opinion of the Director of Planning, Zoning, Development, and Inspections, or designee, leads to alteration of a watercourse then a flood hazard development permit shall be required. The application for a flood hazard development permit shall be submitted to the Director of Planning, Zoning, Development, and Inspections, or designee, and shall include:

1. The name and address of the applicant;
2. An address or a map indicating the location of the construction site;
3. A site plan showing location of existing and proposed structures, sewage disposal facilities, water supply facilities, areas to be cut and filled, and the dimensions of the lot;
4. A statement of the intended use of the structure;
5. A statement as to the type of sewage system proposed;
6. Specification of dimensions of the proposed structures;
7. The specific datum used for all elevations;
8. The elevation (in relation to mean sea level) of the lowest floor, including basement, and if the lowest floor is below grade on one or more sides, the elevation of the floor immediately above;
9. Base flood elevation data for all new, relocated or substantially improved structures;
10. The elevation (in relation to mean sea level) to which the structure will be flood proofed;
11. The description of the extent to which any watercourse will be altered or relocated as a result of the proposed development.

Prior to the issuance of a building or development permit, the applicant shall submit evidence that all necessary permits and approvals have been received from all government agencies from which approval is required by federal or state law.

A permit fee of \$100 is required to be paid to the City of Newport and a copy of a receipt for the same shall accompany the application. An additional fee may be charged if the code enforcement officer and/or board of appeals needs the assistance of a professional engineer.

Cost. As related to substantial improvements, the final arbiter of cost is the Building Official.

Disclaimer of Liability. The degree of flood protection required by the ordinance is considered reasonable but does not imply total flood protection.

Exemptions. Certain provisions of the Special Flood Area Development may not apply to historic structures. Authorities having jurisdiction over historic structures, e.g. State Historic Preservation Officer, local Preservation Planner, may be consulted to determine if the proposed work allows the structure to retain its established historic designation. If the structure does not retain its established historic designation, the Special Flood Area development standards apply.

Severability. If any section, provision, or portion of this ordinance is adjudged unconstitutional or invalid by a court, the remainder of the ordinance shall not be affected.

Abrogation and Greater Restriction. This ordinance shall not in any way impair/remove the necessity of compliance with any other applicable laws, ordinances, regulations, etc. Where this ordinance imposes a greater restriction, the provisions of this ordinance shall control.

#### 15.24.030 NOTIFICATION OF WATERCOURSE ALTERATION

In a riverine situation, the Director of Planning, Zoning, Development and Inspections shall notify the following of any alteration or relocation of a watercourse:

- Adjacent Communities
- NFIP State Coordinator,  
Rhode Island Emergency Management Agency  
645 New London Avenue  
Cranston, RI 02920
- NFIP Program Specialist  
Federal Emergency Management Agency, Region I  
99 High Street, 6th Floor  
Boston, MA 02110

In all cases the carrying capacity of the altered or relocated watercourse shall be maintained.

#### 15.24.040 USE REGULATIONS

##### A. REFERENCE TO EXISTING REGULATIONS

The Special Flood Hazard Areas are established as a floodplain overlay district. All development in the district, including structural and non-structural activities, whether permitted by right or by special permit must be in compliance with the following:

- Rhode Island State Building Code (Rhode Island General Law (RIGL) § 23-27.3);
- Coastal Resources Management Program, Coastal Resource Management Council (RIGL § 46-23)
- Freshwater Wetlands Act, Department of Environmental Management (RIGL § 46-23-6)
- Minimum Standards Related to Individual Sewage Disposal Systems, Department of Environmental Management (RIGL § 46-12)

Any variances from the provisions and requirements of the above referenced state regulations may only be granted in accordance with the required variance procedures of these state regulations.

##### B. OTHER USE REGULATIONS

- 1) Within Zones AH and AO on the FIRM, adequate drainage paths must be provided around structures on slopes, to guide floodwaters around and away from proposed and existing structures.

- 2) Within Zones AO on the FIRM, new and substantially improved residential structures shall have their lowest floor at least as high as the FIRM's depth number above the highest adjacent grade and non-residential structures shall be elevated or flood-proofed above the highest adjacent grade to at least as high as the depth number on the FIRM. On FIRMs without a depth number for the AO Zone, structures shall be elevated or flood proofed to at least two feet above the highest adjacent grade.
- 3) In Zones A1-30 and AE, along watercourses that have a regulatory floodway designated on the City of Newport FIRM or Flood Boundary & Floodway Map encroachments are prohibited in the regulatory floodway that would result in any increase in flood levels within the community during the occurrence of the base flood discharge.
- 4) All subdivision proposals must be designed to assure that:
  - a.) such proposals minimize flood damage;
  - b.) all public utilities and facilities are located and constructed to minimize or eliminate flood damage; and
  - c.) adequate drainage is provided to reduce exposure to flood hazards.
- 5) New detached accessory structures in Zones A, AE, A1-30, AO, and AH (i.e., garages, sheds) do not have to meet the elevation or dry flood-proofing requirement if the following standards are met:
  - a.) The structure is no more than 100 square feet in size and has a value less than \$1000.
  - b.) The structure has unfinished interiors and must not be used for human habitation. An apartment, office or other finished space over a detached garage is considered human habitation and would require the structure to be elevated.
  - c.) The structure is used solely for parking of vehicles and/or limited storage.
  - d.) The accessory must be wet flood proofed and designed to allow for the automatic entry and exit of flood water.
  - e.) The accessory structure shall be firmly anchored to prevent flotation, collapse and lateral movement.
  - f.) Service facilities such as electrical, mechanical and heating equipment must be elevated or flood proofed to one-foot or above the base flood elevation.
  - g.) The structure must not increase the flood levels in the floodway.
- 6) Existing contour intervals of site and elevations of existing structures must be included on plan proposal.

#### C. BASE FLOOD ELEVATION AND FLOODWAY DATA

- 1) Floodway Data. In Zones A, A1-30, and AE, along watercourses that have not had a regulatory floodway designated, the best available Federal, State, local, or other floodway data shall be used to prohibit encroachments in floodways which would result in any increase in flood levels within the community during the occurrence of the base flood discharge.

- 2) Base Flood Elevation Data. Base flood elevation data is required for subdivision proposals or other developments greater than fifty (50) lots or 5 acres, whichever is the lesser, within unnumbered A zones.
- 3) Base Flood Elevations in A Zones. In the absence of FEMA BFE data and floodway data, the best available Federal, State, local, or other BFE or floodway data shall be used as the basis for elevating residential and non-residential structures to or above the base flood level and for flood proofing non-residential structures to or above the base flood level.

#### 15.24.050 DEFINITIONS

Unless specifically defined below, words and phrases used in this ordinance pertain to floodplain management, have the same meaning as they have in common usage giving this ordinance its most reasonable application.

Accessory Structure – A structure which is on the same parcel of property as the principal structure to be insured and the use of which is incidental to the use of the principal structure.

Area of Shallow Flooding - A designated AO, AH, AR/AO, AR/AH, or VO zone on a community's Flood Insurance Rate Map (FIRM) with a one percent or greater annual chance 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.

Area of Special Flood Hazard – see definition for “Special Flood Hazard Area”.

Base Flood – The flood having a one (1) percent chance of being equaled or exceeded in any given year, also referred to as the one hundred (100) year flood, as published by the Federal Emergency Management Agency (FEMA) as part of a Flood Insurance Study (FIS) and depicted on a Flood Insurance Rate Map (FIRM).

Base Flood Elevation (BFE) – The elevation of the crest of the base flood or 100-year flood. The height, as established in relation to the North American Vertical Datum (NAVD) of 1988 (or other datum where specified), in relation to mean sea level expected to be reached by the waters of the base flood at pertinent points in the floodplains of coastal and riverine areas.

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

Building – see definition for “Structure”.

Cost – As related to substantial improvements, the cost of any reconstruction, rehabilitation, addition, alteration, repair or other improvement of a structure shall be established by a detailed written contractor's estimate. The estimate shall *include*, but not be limited to: the cost of materials (interior finishing elements, structural elements, utility and service equipment); sales tax on materials, building equipment and fixtures, including heating and air conditioning and

utility meters; labor; built-in appliances; demolition and site preparation; repairs made to damaged parts of the building worked on at the same time; contractor's overhead; contractor's profit; and grand total. Items to be *excluded* include: cost of plans and specifications, survey costs, permit fees, costs to correct code violations subsequent to a violation notice, outside improvements such as septic systems, water supply wells, landscaping, sidewalks, fences, yard lights, irrigation systems, and detached structures such as garages, sheds, and gazebos.

Development – Any man-made change to improved or unimproved real estate, including but not limited to the construction of buildings or structures; the construction of additions, alterations or substantial improvements to buildings or structures; the placement of buildings or structures; mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment; the storage, deposition, or extraction of materials; and the installation, repair or removal of public or private sewage disposal systems or water supply facilities.

Existing Manufactured Home Park or Manufactured Home Subdivision – A manufactured home park or manufactured home subdivision for which the construction of facilities for servicing the lots on which the manufactured home are to be affixed (including, as a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of the floodplain management regulations adopted by a community.

Expansion to an Existing Manufactured Home Park or Existing Manufactured Home Subdivision – The preparation of additional sites by the construction of facilities for servicing the lots on which the manufacturing homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

Federal Emergency Management Agency (FEMA) - The federal agency that administers the National Flood Insurance Program (NFIP).

Flood or Flooding – A general and temporary condition of partial or complete inundation of normally dry land areas from either the overflow of inland or tidal waters, or the unusual and rapid accumulation or runoff of surface waters from any source.

Flood Insurance Rate Map (FIRM) – The official map of a community on which the Federal Emergency Management Agency (FEMA) has delineated both the special flood hazard areas (100-year floodplain) and the insurance risk premium zones applicable to a community. FIRM published after January 1990 may also show the limits of the regulatory floodway.

Flood Insurance Study (FIS) – The official study of a community in which the Federal Emergency Management Agency (FEMA) has conducted a technical engineering evaluation and determination of local flood hazards, flood profiles and water surface elevations. The Flood Insurance Rate Maps (FIRM), which accompany the FIS, provide both flood insurance rate zones and base flood elevations, and may provide the regulatory floodway limits.

Flood Proofing – Any combination of structural and non-structural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

Floodway – The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one (1) foot. For the purposes of these regulations, the term “Regulatory Floodway” is synonymous in meaning with the term “Floodway”.

Functionally Dependent Use or Facility – A use or facility that 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. The term does not include seafood processing facilities, long-term storage, manufacturing, sales or service facilities.

Highest Adjacent Grade (HAG) – The highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

Historic Structure – Any structure that is: (a) Listed individually in the National Register of Historic Places, or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register; (b) Certified, or preliminarily determined, by the Secretary of the Interior as contributing to the historic significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district; (c) Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or (d) Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified by an approved state program as determined by the Secretary of the Interior.

Lowest Floor – The lowest floor of the lowest enclosed area (including basement).

Manufactured Home – A structure, transportable in one (1) or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term also includes park trailers, travel trailers, recreational vehicles and other similar vehicles or transportable structures placed on a site for one hundred and eighty (180) consecutive days or longer and intended to be improved property.

Manufactured Home Park or Manufactured Home Subdivision – A parcel or contiguous parcels of land divided into two (2) or more manufactured home lots for rent or sale.

Market Value – Market value is the price of a structure that a willing buyer and seller agree upon. This can be determined by an independent appraisal by a professional appraiser; the property’s tax assessment, minus land value; the replacement cost minus depreciation of the structure; the structure’s Actual Cash Value.

New Construction – Structures for which the “start of construction” commenced on or after the effective date of an initial FIRM or after December 31, 1974, whichever is later, and includes any subsequent improvements to such structures. For floodplain management purposes, new construction means structures for which the start of construction commenced on or after the

effective date of a floodplain management regulation adopted by a community and includes any subsequent improvements to such structures.

New Manufactured Home Park or Manufactured Home Subdivision – A manufactured home park or manufactured home subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of floodplain regulations adopted by the community.

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

Regulatory Floodway – see definition for “Floodway”.

Sheet Flow Area – see definition for “Area of Shallow Flooding”.

Special Flood Hazard Area (SFHA) – The land in the floodplain within a community subject to a one (1) percent or greater chance of flooding in any given year. SFHAs are determined utilizing the base flood elevations (BFE) provided on the flood profiles in the Flood Insurance Study (FIS) for a community. Base flood elevations provided on Flood Insurance Rate Map (FIRM) are only approximate (rounded up or down) and should be verified with the BFEs published in the FIS for a specific location. SFHAs include, but are not necessarily limited to, the land shown as Zones A, A1-30, AE, AO, AH, and the Coastal High Hazard Areas shown as Zones V, V1-30, and VE on a FIRM. The SFHA is also called the Area of Special Flood Hazard.

Start of Construction – For other than new construction or substantial improvements under the Coastal Barrier Resources Act (P.L. 97-348), includes substantial improvement and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition placement, substantial improvement or other improvement was within one hundred and eighty (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 erections of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

Structure – A walled and roofed building which is principally above ground, including a manufactured home, a gas or liquid storage tank, or other man-made facilities or infrastructures.

Substantial Damage – Damage of any origin sustained by a structure, whereby the cost of restoring the structure to its pre-damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

Substantial Improvement – Any combination of repairs, reconstruction, rehabilitation, alterations, additions or other improvements to a structure, taking place within any twelve (12) month period, in which the cumulative cost equals or exceeds fifty (50) percent of the market value of the structure (§ 23-27.3-106.1). This term includes structures that have incurred “substantial damage”, regardless of the actual repair work performed. For purposes of this definition, “substantial improvement” is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. The term does not, however, include either: (1) Any project for improvement of a 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 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”.

Variance - A grant of relief by a community from the terms of the floodplain management ordinance that allows construction in a manner otherwise prohibited and where specific enforcement would result in unnecessary hardship.

Violation – Failure of a structure or other development to be fully compliant with the community’s floodplain management ordinance. A structure or other development without required permits, lowest floor elevation documentation, flood-proofing certificates or required floodway encroachment calculations is presumed to be in violation until such time as that documentation is provided.