



City of New Bedford
IN COMMITTEE

May 11, 2021

The Honorable City Council
133 William Street
New Bedford, MA 02740

Dear Honorable Members of the City Council:

The Committee on Ordinances at a Meeting held on Wednesday, April 21, 2021, held a PUBLIC HEARING on a COMMUNICATION, Mayor Mitchell, to City Council, submitting AN ORDINANCE, Amending Chapter 9, Section 4400, Flood Hazard Overlay District (FHOD), which updates definitions, requirements and references to the Bristol County Flood Insurance Rate Map (FIRM) that will become effective on July 06, 2021. (Ref'd 03/11/2021) (Duly advertised in the Standard-Times on Wednesday, April 7, 2021 and Wednesday, April 14, 2021.)

On motion by Councillor Lopes and seconded by Councillor Markey, the Committee VOTED: To recommend to the City Council ADOPTION of the ORDINANCE, Amending Chapter 9, Section 4400, Flood Hazard Overlay District (FHOD), which updates definitions, requirements and references to the Bristol County Flood Insurance Rate Map (FIRM) that will become effective on July 06, 2021. This motion passed on a Roll Call Vote of Yeas 7, Nays 3, with Councillors Abreu, Carney & Giesta opposed; and Councillors Baptiste, yes; Dunn, yes; Gomes, yes; Lima, yes; Lopes, yes; Markey, yes and Morad, yes.

IN COMMITTEE ON ORDINANCES

Hugh Dunn

Councillor Hugh Dunn, Chairman

HD: dmb



CITY OF NEW BEDFORD

In the Year Two Thousand and Twenty One

AN ORDINANCE

AMENDING CHAPTER 9, SECTION 4400 FLOOD HAZARD OVERLAY DISTRICT (FHOD)

31- 509

Be it ordained by the City Council of the City of New Bedford as follows:—

SECTION 1.

Chapter 9, Section 4420 is hereby amended by adding the following language after "Definitions": "The following definitions apply to this section," and adding and/or replacing the following definitions:

FUNCTIONALLY DEPENDENT USE means 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. [US Code of Federal Regulations, Title 44, Part 59] Also [Referenced Standard ASCE 24-14]

HIGHEST ADJACENT GRADE means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure. [US Code of Federal Regulations, Title 44, Part 59]

HISTORIC STRUCTURE means any structure that is:

(a) Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) 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 historical 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 either:

- (1) By an approved state program as determined by the Secretary of the Interior or
- (2) Directly by the Secretary of the Interior in states without approved programs.

[US Code of Federal Regulations, Title 44, Part 59]

NEW CONSTRUCTION. Structures for which the start of construction commenced on or after the effective date of the first floodplain management code, regulation, ordinance, or standard adopted by the authority having jurisdiction, including any subsequent improvements to such structures. *New construction includes work determined to be substantial improvement.*
[Referenced Standard ASCE 24-14]

RECREATIONAL VEHICLE means a vehicle which is:

- (a) Built on a single chassis;
- (b) 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 temporary living quarters for recreational, camping, travel, or seasonal use.

[US Code of Federal Regulations, Title 44, Part 59]

START OF CONSTRUCTION. The date of issuance for new construction and substantial improvements to existing structures, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement or other improvement is within 180 days after the date of issuance. The actual start of construction means the first placement of permanent construction of a building (including a manufactured home) on a site, such as the pouring of a slab or footings, installation of pilings or construction of columns.

Permanent construction does not include land preparation (such as clearing, excavation, grading or filling), the installation of streets or walkways, excavation for a basement, footings, piers or foundations, the erection of temporary forms or the installation of accessory buildings such as garages or sheds not occupied as dwelling units or not part of the main building. 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. [Base Code, Chapter 2, Section 202]

STRUCTURE means, for floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home. [US Code of Federal Regulations, Title 44, Part 59]

SUBSTANTIAL REPAIR OF A FOUNDATION. When work to repair or replace a foundation results in the repair or replacement of a portion of the foundation with a perimeter along the base of the foundation that equals or exceeds 50% of the perimeter of the base of the foundation measured in linear feet, or repair or replacement of 50% of the piles, columns or piers of a pile, column or pier supported foundation, the building official shall determine it to be substantial repair of a foundation. Applications determined by the building official to constitute substantial repair of a foundation shall require all existing portions of the entire building or structure to meet the requirements of 780 CMR. [As amended by MA in 9th Edition BC]

VARIANCE means a grant of relief by a community from the terms of a flood plain management regulation. [US Code of Federal Regulations, Title 44, Part 59]

VIOLATION means the failure of a structure or other development to be fully compliant with the community's flood plain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in §60.3(b)(5), (c)(4), (c)(10), (d)(3), (e)(2), (e)(4), or (e)(5) is presumed to be in violation until such time as that documentation is provided. [US Code of Federal Regulations, Title 44, Part 59]

Section 2. Chapter 9, Section 4400 is hereby amended by striking Section 4430 Floodplain District Boundaries and Base Flood Elevation Date in its entirety and inserting in place thereof the following:

4430. Floodplain District Boundaries and Base Flood Elevation Data. The Floodplain District is herein established as an overlay district. The District includes all special flood hazard areas within the City of New Bedford designated as Zone A, AE, AH, AO, A99, V, or VE on the Bristol County Flood Insurance Rate Map (FIRM) dated July 6, 2021 issued by the Federal Emergency Management Agency (FEMA) for the administration of the National Flood Insurance Program. The exact boundaries of the District shall be defined by the 1%-chance base flood elevations shown on the FIRM and further defined by the Bristol County Flood Insurance Study (FIS) report dated July 6, 2021. The effective FIRM and FIS report are incorporated herein by reference and are on file with the City Clerk, Planning Board, Building Official and Conservation Commission.

Section 3. Chapter 9, Section 4400 is hereby amended by striking "Building Commissioner" from section 4460 Use Regulations, subsection (2.)(F), and inserting "Inspector of Buildings" in place thereof, so the subsection reads as follows:

F. There shall be established a "routing procedure" which will circulate or transmit one copy of the development plan to the Conservation Commission, Planning Board, Board of Health, the City Engineer and the Inspector of Buildings for comments which will be considered by the appropriate permitting board prior to issuing applicable permits.

Section 4. Chapter 9, Section 4400 is hereby amended by replacing reference to "Building Commissioner" with "Inspector of Buildings" and adding the following at the end of the Section:

4471. Abrogation and greater restriction. The floodplain management regulations found in this Floodplain Overlay District section shall take precedence over any less restrictive conflicting local laws, ordinances or codes.

4472. Disclaimer of liability. The degree of flood protection required by this ordinance is considered reasonable but does not imply total flood protection.

4473. **Severability.** If any section, provision, or portion of this ordinance is deemed to be unconstitutional or invalid by a court, the remainder of the ordinance shall be effective.

4474. **Designation of Community Floodplain Administrator.** The City of New Bedford hereby designates the position of Inspector of Buildings as the official floodplain administrator for the City.

4475. **Requirement to submit new technical data.** If the City acquires data that changes the base flood elevation in the FEMA mapped Special Flood Hazard Areas, the City will, within 6 months, notify FEMA of these changes by submitting the technical or scientific data that supports the change(s.) Notification shall be submitted to:

FEMA Region I Risk Analysis Branch Chief
99 High St., 6th floor, Boston, MA 02110

And copy of notification to:

Massachusetts NFIP State Coordinator
MA Dept. of Conservation & Recreation, 251 Causeway Street, Boston, MA 02114

4476. **Variances to building code floodplain standards**

The City will request from the State Building Code Appeals Board a written and/or audible copy of the portion of the hearing related to the variance, and will maintain this record in the community's files.

The City shall also issue a letter to the property owner regarding potential impacts to the annual premiums for the flood insurance policy covering that property, in writing over the signature of a community official that (i) the issuance of a variance to construct a structure below the base flood level will result in increased premium rates for flood insurance up to amounts as high as \$25 for \$100 of insurance coverage and (ii) such construction below the base flood level increases risks to life and property.

Such notification shall be maintained with the record of all variance actions for the referenced development in the floodplain overlay district.

Section 4477. **Variances to local Zoning Ordinances related to community compliance with the National Flood Insurance Program (NFIP).** A variance from these floodplain ordinances must meet the requirements set out by State law, and may only be granted if: 1) Good and sufficient cause and exceptional non-financial hardship exist; 2) the variance will not result in additional threats to public safety, extraordinary public expense, or fraud or victimization of the public; and 3) the variance is the minimum action necessary to afford relief.

Section 4478. **Permits are required for all proposed development in the Floodplain Overlay District.** The City of New Bedford requires a permit for all proposed construction or other development in the floodplain overlay district, including new

construction or changes to existing buildings, placement of manufactured homes, placement of agricultural facilities, fences, sheds, storage facilities or drilling, mining, paving and any other development that might increase flooding or adversely impact flood risks to other properties.

Section 4479. **Assure that all necessary permits are obtained.** The City of New Bedford's permit review process includes the use of a checklist of all local, state, and federal permits that will be necessary in order to carry out the proposed development in the floodplain overlay district. The proponent must acquire all necessary permits and must submit the completed checklist demonstrating that all necessary permits have been acquired.

Section 4480. **Unnumbered A Zones.** In A Zones, in the absence of FEMA BFE data and floodway data, the building department will obtain, review and reasonably utilize base flood elevation and floodway data available from a Federal, State, or other source as criteria for requiring new construction, substantial improvements, or other development in Zone A as the basis for elevating residential structures to or above base flood level, for floodproofing or elevating nonresidential structures to or above base flood level, and for prohibiting encroachments in floodways.

Section 4481. **AO and AH zones drainage requirements.** Within Zones AO and AH on the FIRM, adequate drainage paths must be provided around structures on slopes, to guide floodwaters around and away from proposed structures.

Section 4482. **Recreational vehicles.** In A1-30, AH, AE Zones, V1-30, VE, and V Zones, all recreational vehicles to be placed on a site must be elevated and anchored in accordance with the zone's regulations for foundation and elevation requirements or be on the site for less than 180 consecutive days or be fully licensed and highway ready.

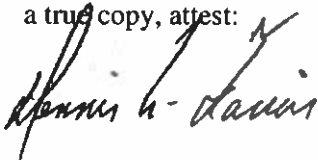
Section 5. This ordinance shall take effect on July 6, 2021 in accordance with the provisions of Chapter 40A of the General Laws.

IN CITY COUNCIL, March 11, 2021

Referred to the Committee on Ordinances and the Planning Board – Yeas 11, Nays 0.

Dennis W. Farias, City Clerk

a true copy, attest:



City Clerk