

CITY OF CONCORD

In the year of our Lord two thousand and nineteen

AN ORDINANCE amending the CODE OF ORDINANCES, Title III, Building and Housing Codes; Chapter 26, Building Regulations, and Title IV, Zoning Code, Chapter 28, Zoning Ordinance

The City of Concord ordains as follows:

SECTION I: Amend the Code of Ordinances, Title III, Building and Housing Code; Chapter 26, Building Regulations, Article 26-1, Building Code, Section 26-1-9, Amendments to the International Building Code/2009(IBC), by amending paragraph (p), as follows:

- (p) Delete Section “1612.3 Establishment of flood hazard areas” in its entirety and insert in its place the following Section “1612.3 Establishment of flood hazard areas”

1612.3 Establishment of flood hazard areas. To establish flood hazard areas, the governing body shall adopt a flood hazard map and supporting data. The flood hazard map shall include, at a minimum, areas and elevations of special flood hazard as identified by the Federal Emergency Management Agency in an engineering report entitled “The Flood Insurance Study for the County of Merrimack, New Hampshire,” with an effective date of April 19, 2010, as amended or revised with the accompanying Flood Insurance Rate Map (FIRM). ~~[and related data along with any revisions thereto, together with areas and elevations of special flood hazard as identified by the U.S. Army Corps of Engineers in an engineering study entitled, “Flood Plain Information, Merrimack River, City of Concord, New Hampshire,” dated August 1972, and also together with thirty two (32) consecutively numbered sheets entitled, “The Flood Plain Floodway Zoning Maps of the City of Concord, New Hampshire” known as or referred to as the “Corps of Engineers Maps.”]~~ The adopted flood hazard maps and supporting data are hereby adopted by reference and declared to be a part of this section.

SECTION II: Amend the Code of Ordinances, Title IV, Zoning Code; Chapter 28, Zoning Ordinance, Article 28-2, Zoning Districts and Allowable Uses, Section 28-2-3, The Zoning Map, paragraph (b), The Zoning Overlay District Maps, by amending subparagraph (b)(1), as follows:

- (b) *The Zoning Overlay District Maps.* The Zoning Overlay District Maps are a series of topical maps displaying those Overlay Districts that are not otherwise displayed on the Zoning Base District Map, as follows:

- (1) The boundaries of, and special limits within, the Flood Hazard (FH) District shall be ~~[as specified hereinafter:]~~ ***identified by the Federal Emergency Management Agency in an engineering report entitled “The Flood Insurance Study for the County of Merrimack, New Hampshire” (FIS), with an effective date of April 19, 2010, as amended or revised with the accompanying Flood Insurance Rate Map (FIRM).***

~~[a. The FH District adjacent to the Merrimack River is shown on thirty-two (32) consecutively numbered sheets entitled “The Flood Plain – Floodway Zoning Maps of the City of Concord, New Hampshire”, known or referred to herein as the “Corps of Engineers Maps”. These sheets are more particularly described as thirty two sheets marked with the following inscription: “Compiled by James W. Sewall Co., Old Town, Maine – controlled by E. N. Roberts, Concord, New Hampshire and James W. Sewall Co., Old Town, Maine, Date of Photography: 11-13-66”; and~~

~~b. For those areas of the City adjacent to the Merrimack River which are not otherwise displayed on the maps noted in Section 28-2-3(b)(1), and for all other areas of the City adjacent to surface waters other than the Merrimack River, the FH District is shown on the Flood Insurance Rate Map (known or referred to herein as the “FIRM”) for the County of Merrimack, New Hampshire, published by the Federal Emergency Management Agency on April 21, 2008, with an effective date of April 19, 2010, and consisting of those portions of the following panels located within the City of Concord: 336, 337, 345, 318, 319, 338, 339, 343, 365, 506, 507, 526, 527, 531, 532, 551, 552, 510, 530, 533, 534, 553, 540, 541, 542, 561 or 705, together with any official amendments and revisions thereto;]~~

SECTION III: Amend the Code of Ordinances, Title IV, Zoning Code; Chapter 28, Zoning Ordinance, Article 28-3, Overlay Districts, Section 28-3-2, Flood Hazard (FH) District, by amending paragraph (c), Limits of the FH District, as follows:

(c) *Limits of the FH District.* The FH District, as displayed on the Zoning Map pursuant to Section 28-2-3(b), The Zoning Overlay District Maps, of this ordinance [~~is comprised of the Flood Insurance Rate Map (FIRM) and the Corps of Engineers Maps, and~~] shall include the following areas within the City:

- (1) ***Floodway. Within the FH District, and as shown on the FIRM as the Floodway, the area that includes the channel of the watercourse and adjacent land that must be reserved in order to discharge flood waters without increasing the water surface elevation.***
- (2) ***One Hundred (100) Year Floodplains. Within the FH District, the area which will be subject to a flood that has a one (1) percent chance of being equaled or exceeded in any given year. The one hundred (100) year floodplain is designated as Special Flood Hazard Areas (SFHA) subject to inundation by the 1% annual flood as shown on the FIRM.***

(3) ***Five Hundred (500) Year Floodplains.*** *Within the FH District, and as shown on the FIRM as Zone X (Other Flood Areas), the area immediately adjacent to the one hundred (100) year floodplain which will be subject to a flood that has a two-tenths (0.2) of a percent chance of being equaled or exceeded in any given year.*

~~[(1) *One Hundred (100) Year Floodplains.* Within the FH District, an area which will be subject to a flood that has a one percent chance of being equaled or exceeded in any given year. The one hundred (100) year floodplain is designated as Zones A, AE, AH, and AO and shown on the FIRM.~~

~~(2) *Five Hundred (500) Year Floodplains.* Within the FH District, and as shown on the FIRM, an area immediately adjacent to the one hundred (100) year floodplain which will be subject to a flood that has a two-tenths (0.2) of a percent chance of being equaled or exceeded in any given year.~~

~~(3) *Floodway and F2 District.* An area within the FH District that includes the channel of the watercourse and adjacent land that must be reserved in order to discharge flood waters without increasing the water surface elevation, indicated as the Floodway on the FIRM and as the F2 District on the Corps of Engineers Maps.~~

~~(4) *F1 District.* Within the FH District, an area outside of the floodway which will be subject to flooding as indicated on the Corps of Engineers Maps.]~~

SECTION IV: Amend the Code of Ordinances, Title IV, Zoning Code; Chapter 28, Zoning Ordinance, Article 28-3, Overlay Districts, Section 28-3-2, Flood Hazard (FH) District, by amending paragraph (d), Uses Prohibited in the FH District, as follows:

(d) *Uses Prohibited in the FH District.*

(1) Uses Prohibited in the Floodway [~~and the F2 District~~].

- a. Buildings;
- b. The above-ground or underground storage of buoyant, flammable, toxic, hazardous, or explosive chemicals or materials;
- c. The dumping of waste materials;
- d. The installation of a well intended as a source for potable water; and
- e. The installation of an on-site subsurface disposal system.

(2) Uses Prohibited in the One Hundred (100) Year Floodplains [~~and the F1 District~~].

- a. Any dwelling unit, or building or structure designed for residential purposes;
- b. The storage of toxic or hazardous materials;
- c. The dumping of waste materials; and
- d. The installation of a well intended as a source of potable water.

(3) Uses Prohibited in the Five Hundred (500) Year Floodplains.

- a. The storage of toxic or hazardous materials.

SECTION V: Amend the Code of Ordinances, Title IV, Zoning Code; Chapter 28, Zoning Ordinance, Article 28-3, Overlay Districts, Section 28-3-2, Flood Hazard (FH) District, by amending the title of paragraph (e), Conditional Use Permits Required for Encroachments in the Floodway and the F2 District, as follows:

- (e) *Conditional Use Permits Required for Encroachments in the Floodway [~~and the F2 District.~~]*

SECTION VI: Amend the Code of Ordinances, Title IV, Zoning Code; Chapter 28, Zoning Ordinance, Article 28-3, Overlay Districts; Section 28-3-2; Flood Hazard (FH) District, paragraph (f), Development Standards in the FH District, by amending the subparagraph (2) as follows:

- (2) *Buildings or Structures in the One Hundred (100) Year Floodplain [~~and the F1 District.~~]* Nonresidential buildings or structures may be constructed or improved within the one hundred (100) year floodplain [~~and the F1 District~~] provided that such buildings or structures are served by municipal water and sewer services, and subject to the following standards:

SECTION VII: Amend the Code of Ordinances, Title IV, Zoning Code; Chapter 28, Zoning Ordinance, Article 28-3, Overlay Districts, Section 28-3-2, Flood Hazard (FH) District, by amending paragraph (h), Determination of Required Elevation in the FH District, as follows:

- (h) *Determination of Required Elevation in the FH District.* The Code Administrator shall determine the required elevation for development outside of the floodway in the FH District within the Merrimack River floodplain [~~by referring to the required elevations associated with the Corps of Engineers Maps, or~~] by adding two (2) feet to the [~~applicable flood reference~~] **base flood** elevation on the FIRM [~~which ever is the greater~~]. The Code Administrator shall determine the required elevation for development outside of the floodway within the floodplains of surface waters other than the Merrimack River [~~;~~] by adding one foot to the [~~applicable flood reference~~] **base flood** elevation on the FIRM. The flood reference elevations on the FIRM shall be determined in the following order of precedence according to the data available:

- (1) In Zone[s] AE [~~and AH,~~] by reference to the **base flood** elevation data *in the FIS* [~~provided in the Flood Insurance Study for the City of Concord~~] and accompanying FIRM;
- (2) ***In Zone A with no base flood elevation shown in the FIS or FIRM:***
 - a. *The Flood Plain Administrator shall obtain, review, and reasonably utilizing any one hundred (100) year flood elevation data available from Federal, State, or other sources including data submitted pursuant to development applications;*
 - b. *Where a base flood elevation is not available or not known, the base flood elevation shall be determined to be at least 2 feet above the highest adjacent grade;*

- c. *For developments greater than 5 acres, the applicant shall develop a base flood elevation based on a hydrologic and/or hydraulic study.*
- (2) [~~In unnumbered A Zones, by obtaining, reviewing, and reasonably utilizing any one hundred (100) year flood elevation data available from federal, state, or other sources including data submitted pursuant to development applications to the City of Concord; or~~
- (3) [~~In Zone AO, the flood reference elevation is determined by adding the elevation of the highest adjacent grade to the depth number specified on the FIRM or, if no depth number is specified on the FIRM, a depth of two (2) feet.]~~

SECTION VIII: Amend the Code of Ordinances, Title IV, Zoning Code; Chapter 28, Zoning Ordinance, Article 28-3, Overlay Districts, Section 28-3-2, Flood Hazard (FH) District; by amending paragraph (j), Substantial Improvements to Existing Residential Structures Within the 100-Year and 500-Year Floodplains, as follows:

- (j) *Substantial Improvements to Existing Residential Structures Within the 100-Year and 500-Year Floodplains.* Substantial improvements to existing residential structures may only occur within the 100-year floodplain [~~and the F1 District~~] and the 500-year floodplain [~~and the F1 District~~] subject to the following provisions:

SECTION IX: Amend the Code of Ordinances, Title IV, Zoning Code; Chapter 28, Zoning Ordinance, Article 28-9, Administration and Enforcement, Section 28-9-3, Decisions by the Zoning Board of Adjustment (ZBA), paragraph (c), Variances, by amending subparagraph (3), as follows:

- (3) Additional Findings Required in the Flood Hazard (FH) District. Where a variance is requested from the provisions of Section 28-3-2, Flood Hazard (FH) District, of this ordinance, the ZBA may [~~authorize a variance only where it can make the following findings, in addition to those required pursuant to Section 28-9-3(e)(2), that the granting of a variance:]~~ ***grant a variance as authorized by RSA 674:33, I (b), and in accordance with the following :***
 - a. *The applicant shall have the burden of demonstrating the following criteria in addition to those required under state law and pursuant to Section 28-9-3(c)(2):*
 1. *The variance will not result in increased flood heights of any magnitude, additional threats to public safety, fraud on or victimization of the public; or extraordinary public expense;*
 2. *The issuance of the variance will not conflict with other State, Federal or local laws or Ordinances;*
 3. *If the requested variance is for activity within a floodway, no increase in flood levels during the base flood discharge will result; and*
 4. *The variance is the minimum necessary, considering the flood hazard, to afford relief.*

- b. *The Zoning Board of Adjustment shall notify the applicant in writing that:*
 - 1. *The issuance of a variance to construct below the base flood elevation will result in increased premium rates for flood insurance up to amounts as high as \$25 for \$100 of insurance coverage; and*
 - 2. *Such construction below the base flood elevation increases risks to life and property.*
 - c. *The Zoning Administrator shall maintain a written record of all variance actions, including the justification for their issuance.*
- [a. ~~Will not result in an increase in flood heights, additional threats to public safety, or extraordinary public expense;~~
- b. ~~Will not result in increased flood levels during the base flood discharge in the floodway; and~~
- c. ~~Is the minimum necessary, considering the flood hazard, to afford relief.]~~

SECTION X: This ordinance shall take effect on adoption.

Explanation: Matter added to the current ordinance appears in *bold italics*.

Matter removed from the current ordinance appears in [brackets and ~~struck through~~].