



RECOMMENDATION

Rosanna Mazzaccari, Town Clerk
Town of New Paltz
P.O. Box 550
New Paltz, NY 12561

REFERRAL NO: 2015-135/136

DATE REVIEWED: 11/04/15

Re: Amendments Flood Damage Prevention, Zoning & Subdivision Provisions of the Town Code relative to flood damage prevention

This is a proposal to amend the following within the Town Code as it relates to the requirements for flood damage protection: Flood Damage Protection Chapter 82, Zoning Section 140-19, Subdivision of Land Section 121-2. The Amendments generally ease restrictions regarding new construction and reconstruction of buildings within flood plains.

The following materials were received for review:

Copies of proposed amendments (in local law filing format) to the Town Code as noted above

Red lined summary of amendments

SEQRA – Parts 1-3 Short Environmental Assessment Form

Discussion

Historically, New Paltz has had one of the most restrictive flood plain development statutes in the County that included elevation requirements for driveways and new construction, as well as cumulative damage requirements. The thrust of the amendments is a return to the minimum requirements of FEMA and the National Flood Insurance Program (NFIP) for flood damage protection (Chapter 82) and similarly amend restrictive provisions under zoning and subdivision controls within the flood overlay district to remove requirements for elevation of driveways and vehicle access. The Board has mixed reactions to the proposed amendments, recognizing that portions of the existing statutes can be seen as unduly restrictive, while other portions represent prudent avoidance of development in flood plains and getting homes and individuals, including first responders, out of harms way. The latter is the direction that both the State of New York and FEMA have been steadily moving toward. It is represented in many forms including:

- optional requirements to flood damage protection statutes provide by both FEMA and DEC;
- recent state legislation known as the Community Risk and Resiliency Act; and
- the Community Rating System under the National Flood Insurance Protection Program (NFIP).

Each of these provide policy direction and guidance that suggests that some of what the community is considering would not be viewed as consistent with what those most acquainted with the regulation of floodplains consider as best practices. The Board also

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notes that within the statute there remain some measures that clearly go beyond the minimum standards, such as a requirement to remove the same amount of material that is placed as fill within the floodplain. Accordingly, the Board suggests that New Paltz, a New York Rising Community, so designated due to the damage caused by recent storms, take this opportunity to engage in a more thorough discussion as to how to meet the regulatory challenges associated with its floodplain lands. This is especially timely given the policy direction noted above and the strenuously articulated position by some that the minimum regulation is the maximum acceptable.

The direction that the Board considers appropriate is one where the regulatory environment is equal to the task of the community qualifying under the NFIP Community Rating System at some level.

Recommendation – Advisory Comments

The following is a series of observations concerning the proposed amendments, as well as other opportunities that were not proposed. The recommendations and considerations contained within them should be considered advisory and taken in the context noted above for the community to establish the objective of qualifying under the NFIP Community Rating System and setting in motion the process to do so.

Proposed Amendments

Chapter 82: It is critical that the proposed amendments, if enacted, be able to meet the minimum requirements of the NFIP as articulated in the model statutes issued by NYSDEC. Several provisions in the proposed amendments appear to differ considerably from the model law. Of particular concern, is the removal of the reference to the AO zone in several sections. The minimum requirements under the NFIP appear to still require elevation for this zone (slightly different), and adequate drainage paths for properties in this zone, both of which are eliminated by this amendment.

Recommendation: Chapter 82 should be checked against the most recent NYSDEC statute for conformance. Areas of difference should be resolved in consultation with the NYSDEC. The Board would note that elevation of structures in the AO zone 2 feet above the base flood elevation is the requirement in the Village of New Paltz.

Access: The amendments include removal of the requirement for access drives and roads to be no lower than 0.5 to 1.5 ft below the base flood elevation. This provision, in our opinion, creates the most hardship particularly for reconstruction and new construction. It is also of problematic regulatory value where the adjoining public roadway is below the base flood elevation.

Recommendation: Rather than eliminate the provision in its entirety, consideration should be given to require an access elevation equal to the elevation of the adjoining public road or the base flood elevation, whichever is lower, and provide for a waiver. In this manner the risk to first responders is not greater than the risk in traversing the public road and individual cases can request relief.

Septic Systems: The statute still requires the elevation of septic systems three feet above the base flood elevation. This appears to be more restrictive than either the NFIP or the Ulster County Sanitary Code requirements.

Recommendation: Review this requirement in light of other changes proposed

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Substantial Damage and Cumulative Substantial Improvement:

Providing a means to address flood damages that occur frequently so as to break the cycle of flood–fix–flood is seen by many professionals in the field as key to effectively managing development that already exists within the floodplain. The amendments eliminate consideration of factors that address these types of repetitive loss issues. While some argue that the occurrence interval for the 100-year storm is such that no effort is needed, the regulation places the calculation on a 10 year cycle seeking to address those structures that are at the highest risk. The current definition of Cumulative Substantial Improvement appears to be the regulation most unrelated to flood damage and its repeal is of the least concern to the Board.

Recommendation: The Community should revisit the decision to amend the definition of substantial damage. It would helpful to gather existing flood insurance claims for the community as a means to gauge likely impacts. It is also important to note that flood insurance policies now have available Increased Cost of Compliance (ICC) coverage up to \$30,000.00 for just these types of regulations.

Underlying Zoning:

The current flood overlay district regulations alter the use schedule and in the A1.5 decrease the allowable density to 1 unit per 3 acres. Other communities have determined certain lands, including floodplains, as sensitive areas and have not only altered use schedules but also reduced allowable densities. Saugerties, for example, requires twice the acreage in its sensitive overlay zones as allowed in the underlying zoning. Other communities utilize similar reductions in density, but temper this by allowing the creation of an additional lot, if sufficient acreage exists, to meet the requirements of the underlying zoning, but not enough to meet the requirements in the overlay district.

Recommendation: Consider further density reductions associated with the lands within floodplains. Such reductions are consistent with the Community Rating System, which offers points for low density zoning when different from other density requirements in the statute.

Community Rating System (CRS)

The pursuit of becoming eligible for participation under the Community Rating System is one that has multiple benefits that include not only more responsible floodplain development, but also benefits those within the community that purchase flood insurance in the form of lower rates.

Recommendation: As indicated in our initial discussion, the Board urges the community to establish participation in the CRS as an objective as it considers these amendments. We would also suggest that the community explore the ability to utilize its NY Rising funding to obtain any assistance that it may need.

In closing, the Board notes that in most instances as a nation we have moved away from the structural approach to floodplain management to one that places both the protection of the environment and the protection of people hand in hand. It is not surprising, given the cost of the public subsidy for flood insurance, and the current 23 billion dollar debt of the NFIP to the federal government that the discussion now centers on the adjustments on how to further reduce overall risk of flood damage. This has led to friction between communities and those remaining within floodplains about what is the right balance between community needs and the personal impacts of regulation. It is that discussion that we ask the community to continue.

Reviewing Officer

Dennis Doyle,
Director