

Agenda #3

Review of Code Requirements for Elevating Flood Zone Properties

Five or six years ago, Commissioners considered an analysis of existing code provisions related to elevating properties in a flood zone and some recommendations regarding those provisions. While the effort was not rejected, it was not fully pursued. There is some confusing language in those provisions that should be revisited, and the provisions may not be well understood.

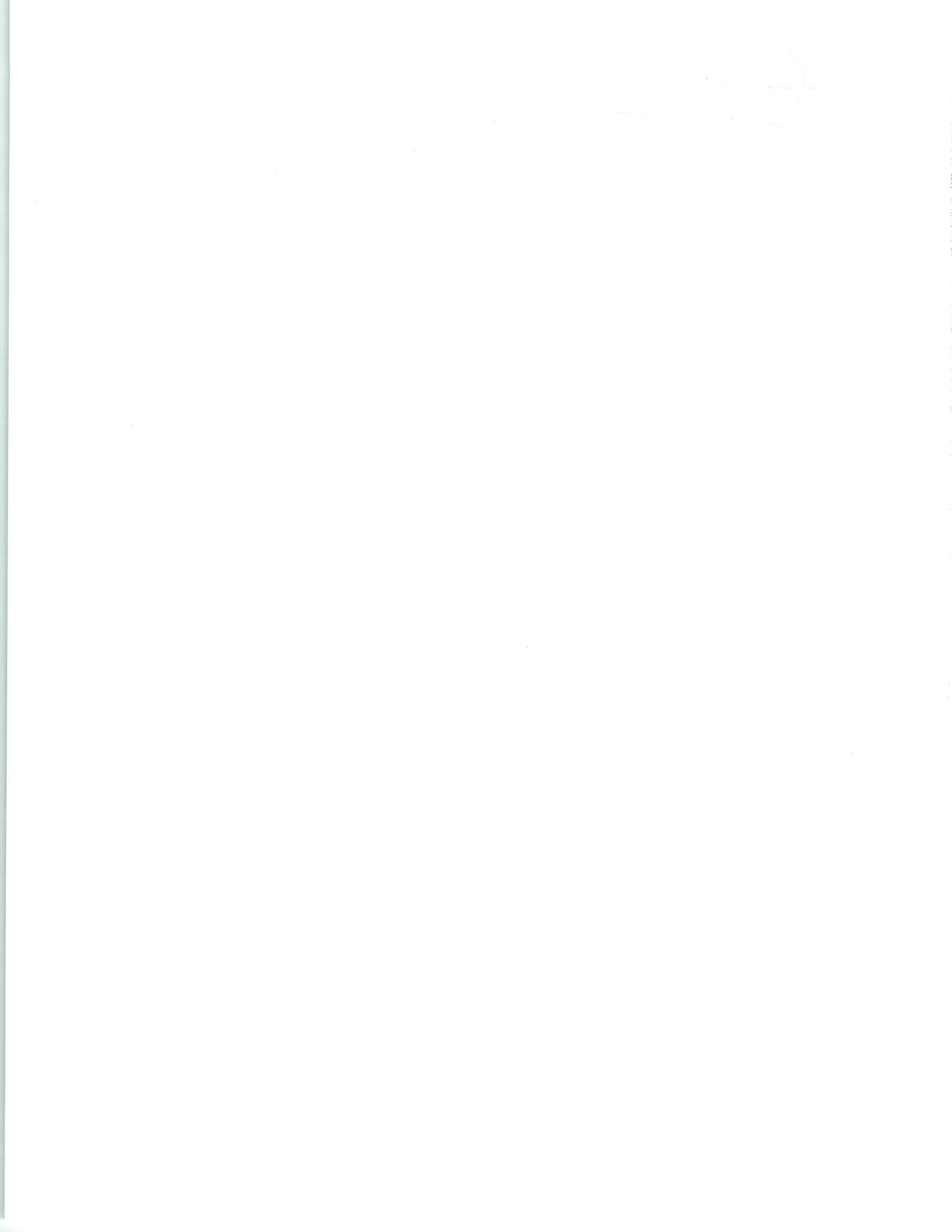
The discussion of increasing freeboard at the last meeting reflects some possible misunderstanding. For example, there was an assertion that properties that encroach on setbacks could not be substantially renovated and elevated. The code does appear to allow that:

- Section 101-27(3) illustrates both opportunity and limit for such properties. "No existing structure which encroaches in any required setback area(s) shall be raised to an elevation higher than the base flood elevation plus town-mandated freeboard plus a vertical tolerance of 0.10 foot unless otherwise provided for in Chapter **185**, Zoning, or repositioned so as to no longer encroach."
- Interpretation of sections 185-59A and 185-60B suggests that in general properties that do not conform with setbacks or other "bulk requirements" may be elevated to FEMA and freeboard levels in the same configuration but subject to the height limit.
- Section 185-46 waives the height limit for substantially damaged properties built before adoption of the flood insurance rate maps.

The above interpretations could be subject to debate, but they also point to the need for clarification.

It seems reasonable to start with consideration of what we want property owners to be able to do in protecting their properties. We could then assess how existing provisions address those interests and make changes to the code as needed.

The Charter and Code Review Committee would be charged with exploring some scenarios that include examples of pre-and post-flood maps, conforming and non-conforming, substantially damaged and voluntarily improved properties and making recommendations accordingly.



Scenarios for Elevating Structures in a Flood Zone

Scenario 1

Owner A has a three-story house built before adoption of the flood insurance rate maps (pre-FIRM). The house was constructed at ground level and is 33 feet in height. The flood zone rating for the property is AE(6), and the land is 1 foot above sea level. The house is damaged by a fire, and the cost to repair the damage exceeds 50 % of the value of the structure. Because the repair cost exceeds the FEMA 50% threshold, the house must be elevated to FEMA and town requirements.

To satisfy the requirements, the first floor must be raised by 5 feet to meet the FEMA base flood elevation requirement, and an additional 2 feet to satisfy the town's freeboard requirement. Because the existing structure is 33 feet, the elevated structure would exceed the town's maximum allowable height of 32 feet from BFE plus freeboard. The town code has a height waiver for pre-FIRM properties that are substantially damaged and must be elevated. To qualify for the waiver, the structure must be elevated in substantially the same configuration.

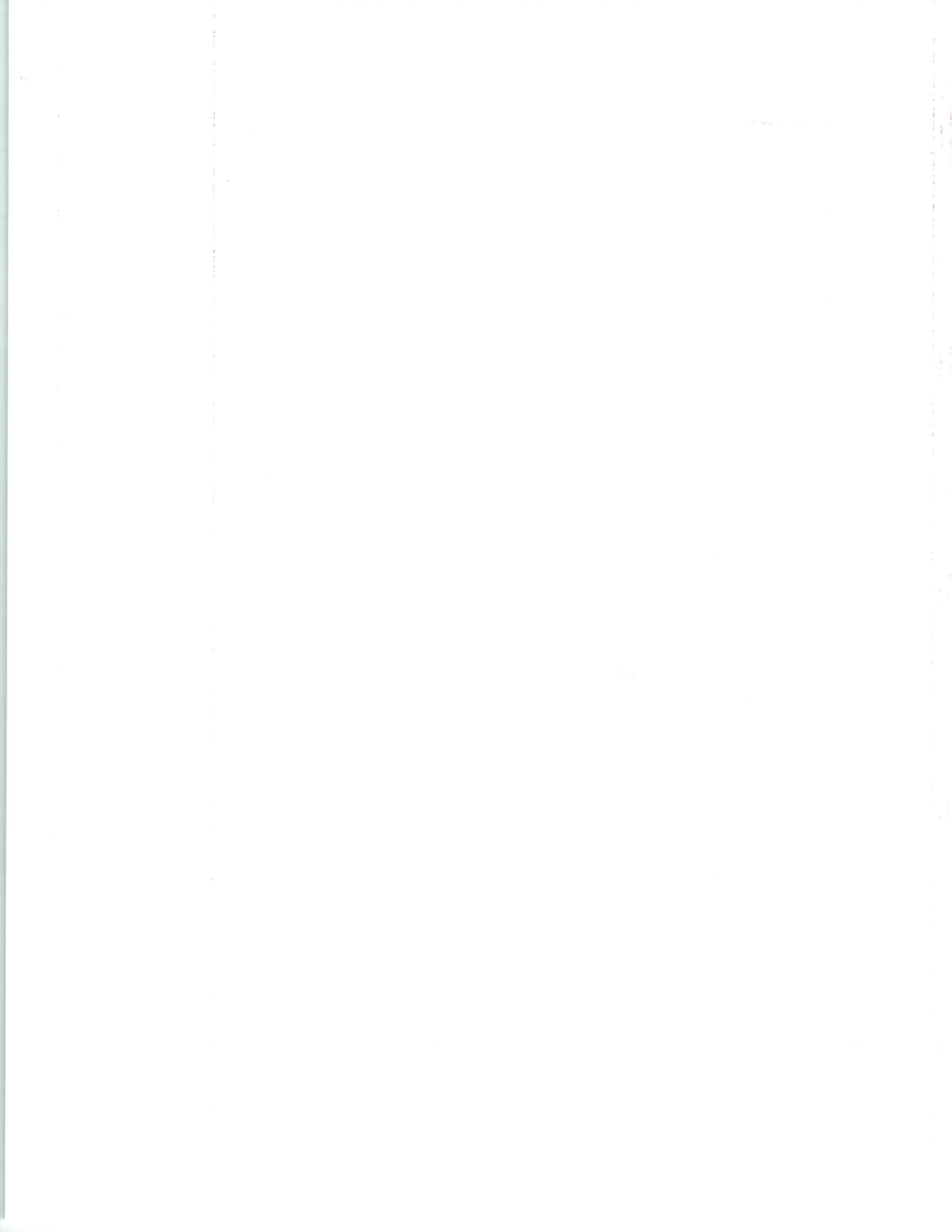
Q: Should this waiver be continued or should the owner be required to make renovations to stay within the height limit?

Q: The structure extends two feet into the current setback on one side of the property and is therefore a non-conforming property. Should the owner be able to elevate the structure in the same configuration despite the setback encroachment and take advantage of the height limit waiver?

Q: The owner built a small addition five years earlier. The cost of the addition did not exceed the FEMA 50 % threshold for substantial renovation, and thus the owner was not required to elevate the property at that time. Should the property still be considered as pre-FIRM and qualify for the maximum height waiver?

Scenario 2

Owner B's property was constructed after adoption of the flood insurance rate maps. It was built to the earlier town-wide height standard of 35 feet measured from the crown of the adjacent roadway. It is in an AE(6) flood zone, and the elevation of the lot is 3 feet above sea level. The house is severely damaged by a storm. The cost to repair exceeds 50% of the structure's value and thus the repair must include elevating the structure.



To satisfy the requirements, the first floor must be raised by 3 feet to meet the FEMA base flood elevation of 6 feet, plus an additional 2 feet of freeboard.

Q: Although not a pre-FIRM structure, should the owner be able to elevate the structure in the same configuration despite exceeding the maximum height limit.

Scenario 3

Owner C's house is pre-FIRM and conforms to all current setback requirements. The owner wishes to renovate the property, but virtually any significant renovation will exceed 50% of the cost of the structure requiring elevation of the structure. The structure is built at ground level in an AO(2) flood zone, and the renovated structure must be raised by four feet, two feet to meet the FEMA requirement and 2 feet for freeboard. The current structure is 25 feet in height.

Q: Should the owner be permitted to raise the structure an additional 3 feet to the 32 feet height limit or be restricted to the FEMA and freeboard requirements?

Q: Should the requirements be different for a post-FIRM property?

Q: Should the requirements be different if the structure encroaches in one or more setbacks?

Town of Dewey Beach, DE
Wednesday, December 4, 2024

Chapter 185. Zoning

Article VIII. Supplementary Height, Area and Bulk Regulations

§ 185-46. Modification of height regulations.

[Amended 7-10-2010 by Ord. No. 682^[1]; 5-9-2015 by Ord. No. 718]

- A. The height standard in this chapter (See Table 2, Bulk Zoning Standards in All Districts, at the end of Chapter 185.^[2]) shall be waived for a pre-FIRM building or structure situated in a special flood hazard area that is substantially damaged, and therefore must be raised to a specified minimum base elevation determined by FEMA's effective Flood Insurance Rate Map base flood level plus Town mandatory freeboard, provided that said building or structure is rebuilt to a substantially similar configuration as existed prior to the damage except for any increased ceiling height in previous living space(s) as required by effective building code and not elevated more than 0.1 foot above such elevation as required to meet Town Flood Damage Reduction Ordinance standards. (See Chapter 101, Flood Damage Reduction, of the Town Code.)

[2] Editor's Note: Table 2 is included as an attachment to this chapter.

- B. All other exclusions to the height standard are included in Table 2, Bulk Zoning Standards in All Districts.^[3]

[3] Editor's Note: Table 2 is included as an attachment to this chapter.

[1] Editor's Note: This ordinance also provided that it shall take effect 9-10-2010.

Article IX. Nonconformities

§ 185-59. Damage or destruction of nonconforming use or building.

[Amended 1-11-2014 by Ord. No. 710]

If a nonconforming building is damaged by fire, storm, infestation, or other peril not caused intentionally by the property owner, it may be repaired or reconstructed to essentially the same configuration as existed prior to the damage, provided that application for all required building permits be made within one year and six months of the date of the damage. If a different configuration or an expansion of the original building is proposed, it must conform to all applicable regulations, including all applicable setbacks, height and elevation requirements.

- A. Except that in the process of repairing or reconstructing a residential-use structure located in a flood-prone area (e.g., a FEMA-designated VE, AE, or AO flood zone) that does not conform to the required setbacks in any respect and does not meet Town building-elevation standards and has suffered substantial damage, said structure shall be elevated to the relevant minimum building-elevation requirement as per § 185-60B of this chapter.

- (1) For the purposes of this section, the meaning of "substantial damage" shall be that used by the National Flood Insurance Program (NFIP): "damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal or exceed 50% of the market value of the structure before the damage occurred."
- (2) For the purposes of this chapter, the "Town's building-elevation requirement" shall be the sum of the FEMA-designated one-percent-annual-probability base flood elevation (BFE) for the flood zone in which the structure is located as shown on the effective Flood Insurance Rate Map (FIRM) plus the additional height required by the Town as part of its participation in the National Flood Insurance Program (NFIP), i.e., freeboard. (The required freeboard is specified in the Town Code in § 101-11. Elevation, floodproofing and constructions standards applicable within general floodplain areas. At the time of enactment of this section the Town's freeboard height requirement is one foot.)
 - (a) The structure's "building elevation" shall be defined as per NFIP regulations as "the elevation of the lowest habitable floor (including basement)" for buildings in AO and AE flood zones and as "the elevation of the bottom of the lowest horizontal structural member of the lowest floor" for buildings in a VE flood zone. Building elevation may at times be referred to as base elevation in Town code.
- (3) Under no circumstance shall any structure elevated under this section exceed the Town-wide thirty-five-foot building height limit.

§ 185-60. Extension of nonconforming use or building.

- A. This section describes conditions under which the expansion of a nonconforming use of a building is permitted. A nonconforming use of a building may be extended either within the building or outside the building or into a new addition or building on the same lot if the nonconforming use was in existence at the time of original enactment of this chapter in 1983. A nonconforming use of a building may be extended into a building on a contiguous lot if the nonconforming use and common ownership of such contiguous lots predate the time of original enactment of this chapter in 1983 and the contiguous lots have been continuously under common ownership since 1983. Any such expansion of a nonconforming use requires approval as a special exception by the Board of Adjustment as provided in Article X of this chapter, and is subject to the following special requirements:
 - (1) The extension is for a use which is necessarily incident to the existing use;
 - (2) Such extension shall not encroach on any of the setback or yard requirements for the district in which the use is located;
 - (3) Such extension shall have a floor area not to exceed 50% of the floor area of the existing building or portion thereof;
 - (4) It will not impair the value of the adjoining property or adversely affect the character of the neighborhood;
 - (5) Such extension shall be permitted only within the maximums for square footage, number of bedrooms, and floor area ratio (FAR) applicable to the property; and
[Added 5-19-2023 by Ord. No. 811^[1]
[1] Editor's Note: This ordinance also renumbered former Subsection A(5) as Subsection A(6).
 - (6) Only one extension shall be permitted by the Board of Adjustment during the life of the nonconforming use.
- B. A building nonconforming only as to height, area, or bulk requirements may be altered or extended, provided such alteration or extension does not increase the degree of nonconformity in any respect. A building which does not conform to the required setbacks in any respect shall not be expanded either vertically or horizontally in the setback area.

Voluntary Increase in Freeboard

Despite the recommendation from Planning and Zoning to increase the required freeboard to 3 feet, Commissioners voted at the October 18 meeting to increase freeboard to 2 feet assuming that an increase to three feet could be made in the future if it seemed warranted. However, another increase in required freeboard within the next few years seems unlikely. The amount of freeboard should be viewed as a long-term standard. While catastrophic losses are unlikely, they do occur, even to new properties. Substantial damage to a property designed to the standard just enacted could become a complete rebuild to satisfy a higher new freeboard standard.

An additional freeboard option is proposed for consideration. Owners could be offered a voluntary option to increase freeboard with a corresponding increase in maximum height so that owners can choose to increase flood protection for their properties and take advantage of any additional reduction in insurance premiums.

New, substantially damaged, or substantially improved properties would require elevation to base flood elevation plus 2 feet of freeboard but could be elevated up to 1 additional foot. Maximum height for such properties would be increased by the amount of optional freeboard chosen.

The Charter and Code Committee would be asked to consider and make recommendations on this proposed option.

