

ORDINANCE NO. 19-05

AN ORDINANCE IN AMENDMENT OF SECTION 21-188 OF THE CODE OF ORDINANCES, TOWN OF NORTH KINGSTOWN, ENTITLED, "SPECIAL FLOOD HAZARD OVERLAY DISTRICT"

Note: Words set as ~~strikeover~~ are to be deleted from the ordinance; all underlined text is to be added to the ordinance.

The Town Council of the Town of North Kingstown hereby ordains:

SECTION 1. That Section 21-188 of the Code of Ordinances, Town of North Kingstown, entitled, "Special Flood Hazard Overlay District" is hereby amended as follows:

- (a) *Purpose.* The purpose of this section is to ensure public safety, minimize hazards to persons and property from flooding, protect watercourses from encroachment, and to maintain the capability of floodplains to retain and carry off floodwaters. The town elects to comply with the requirements of the National Flood Insurance Act of 1968 (P.L. 90-488, as amended).
- (b) *Applicability.* This special flood hazard area overlay district contains special flood hazard areas, including floodways and coastal high hazard areas. Special flood hazard areas are subject to recurrent flooding which presents serious hazards to the health, safety, welfare, and property of the residents of the town. Regulation of the development and alteration of such areas is thus in the public interest.

For communities adopting specific panel numbers with "Countywide" FIRMs and FIS:

- (1) The special flood hazard areas (SFHA) are herein established as a floodplain overlay district. The district includes all special flood hazard areas within the town designated as zone A, AE, AH, AO, A99, V, or VE on the Washington 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 Washington County FIRM that are wholly or partially within the town are panel numbers 44009C0013H, 44009C0085H, 44009C0092H, 44009C0094H, 44009C0101H, ~~44009C0102H~~, 44009C0103H, ~~44009C0107H~~, 44009C0111H, 44009C0113H, 44009C0185H, 44009C0201H dated October 19, 2010; and 440090014J, 44009C0018J, 44009C0019J, 44009C0102J, 44009C0104J, 44009C0106J, 44009C0107J, 44009C0108J, 44009C0109J, 44009C0112J, 44009C0114J, 44009C0116J, 44009C0118J and 44009C0202J dated October 16, 2013. 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 Washington County Flood Insurance Study (FIS) report dated October 16, 2013. The Office of Planning and Development is responsible for floodplain management. The FIRM and FIS report and any revisions thereto are incorporated herein by reference and are on file with the Town building official.
- (2) Administrative provisions. The sections below contain language to ensure proper administration and the legal enforceability of this section.

- a. Building permit. All proposed construction or other development within a special flood hazard area shall require a permit.
- b. The National Flood Insurance Program (NFIP) special flood hazard area requires permits for all projects that meet the definition of development, not just "building" projects. Development projects include any filling, grading, excavation, mining, drilling, storage of materials, temporary stream crossings. If the construction or other development within a special flood hazard area is not covered by a building permit, all other non-structural activities shall be permitted by either the Rhode Island Coastal Resources Management Council and/or the Rhode Island Department of Environmental Management as applicable. Therefore if another state agency issues a permit, the local building official must have the opportunity for input and keep a copy of the respective permit in their files.
- c. 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.
- d. Review by building official. The building official shall review all development proposed in the special flood hazard overlay district to ensure the development is in compliance with the provisions of the tenth edition of the state building code (July 1, 2010), and all subsequent amendments, concerning flood-resistant siting and construction.
- e. A permit fee (based on the cost of the construction) may be required to be paid to the town 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.
- f. Permitted uses. Any use permitted in the primary zoning district shall be permitted in the special flood hazard overlay district, provided that such use is in accordance with the following additional minimum requirements:
 1. *Floodways*. No development proposing fill, new construction, substantial improvement, or other encroachment within a floodway which will result in any increase in flood levels during the occurrence of the 100-year flood shall be permitted. The placement of mobile homes shall be prohibited.
 2. *Coastal high hazard areas*. The alteration of sand dunes, where existent, is prohibited. All new construction shall be located landward of the spring (moon) high tide. The placement of mobile homes shall be prohibited.
- g. Special use permits. Exceptions to subsection (c) of this section may be granted by the zoning board of review when consistent with Section 21-6 and Section 60.6 of the National Flood Insurance Program, as amended.
- h. *Site plan review*. Every person proposing development in the special flood hazard area, including but not limited to buildings and other related structures, mining, dredging, filling, grading, paving, excavation or drilling, shall submit a site plan for approval by the building official, town engineer, and the director of planning and development. Site plans shall supply at least the following information:

1. Accurate location of the proposed development.
 2. Nature of the proposed development including types of activities proposed; areas to be disturbed; and quantities of materials to be excavated, moved or filled.
 3. Elevation of the site relative to mean sea level according to established standards.
 4. A description of the extent to which any existing watercourse would be altered or relocated as a result of the proposed development. Prior to granting site plan approval for a proposal involving the alteration or relocation of a watercourse, the director of planning and development shall notify adjacent communities, the state Office of Statewide Planning, and the Federal Emergency Management Agency.
 5. Any such additional information as is deemed necessary for a complete description of the proposed development.
 - i. Disclaimer of liability. The degree of flood protection required by the ordinance is considered reasonable but does not imply total flood protection.
 - j. 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.
 - k. Abrogation and greater restriction. This section shall not in any way impair/remove the necessity of compliance with any other applicable laws, ordinances, regulations, etc. Where this section imposes a greater restriction, the provisions of this section shall control.
 - l. Enforcement. The building official shall enforce all provisions as applicable in reference to RIGL § 23-27.3-108.1.
 - m. Penalties. Every person who shall violate any provision of this code shall be subject to penalties put forth in RIGL § 23-27.3-122.3.
- (c) *Notification of watercourse alteration.* In a riverine situation, the building official shall notify the following of any alteration or relocation of a watercourse:
- (1) Adjacent communities;
 - (2) Bordering states (optional);
 - (3) NFIP state coordinator:

Rhode Island Emergency Management Agency
645 New London Avenue
Cranston, RI 02920
 - (4) Risk analysis branch:

Federal Emergency Management Agency, Region I
99 High Street, 6th Floor
Boston, MA 02110

The carrying capacity of the altered or relocated watercourse shall be maintained.

(d) *Use regulations.*

- (1) *Reference to existing regulations (b, c, d, e communities).* 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:
 - a. Rhode Island State Building Code (as established under RIGL § 23-27.3);
 - b. Coastal Resources Management Act, Rhode Island Coastal Resources Management Council (RIGL ~~chs.~~ §46-23);
 - c. Endangered Species Act, Rhode Island Department of Environmental Management (RIGL § 20-1-2);
 - d. Freshwater Wetlands Act, Rhode Island Department of Environmental Management (RIGL § 2-1-18);
 - e. Minimum Standards Related to Individual Sewage Disposal Systems, Rhode Island Department of Environmental Management (RIGL ~~chs.~~ § 5-56, 5-56.1, 23-19.15, 23-19.5, 23-24.3, 42-17.1, and 46-13.2);
 - f. Water Quality Regulations, Rhode Island Department of Environmental Management (RIGL ~~chs.~~ § 42-17.1 and 42-17.6 and 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.

(2) *Other use regulations.*

- a. 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 structures (c, d, e communities, if AH or AO appear).
- b. Within zones AO on the FIRM, new and substantially improved residential structures shall have the top of the 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 floodproofed to at least two feet above the highest adjacent grade (c, d, e communities, if AO appear).
- c. In zones A1-30 and AE, along watercourses that have a regulatory floodway designated on the Washington County FIRM encroachments are prohibited in the regulatory floodway which would result in any increase in flood levels within the community during the occurrence of the base flood discharge (d, e communities).
- d. All subdivision proposals must be designed to assure that:
 1. Such proposals minimize flood damage;

2. All public utilities and facilities are located and constructed to minimize or eliminate flood damage; and
 3. Adequate drainage is provided to reduce exposure to flood hazards (b, c, d, e communities).
- e. 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.
1. The structure has a value less than \$1,000.00.
 2. 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.
 3. The structure is not in the floodway.
 4. The structure is not used for storage of hazardous materials.
 5. The structure is used solely for parking of vehicles and/or limited storage.
 6. The accessory must be wet floodproofed and designed to allow for the automatic entry and exit of flood water.
 7. The accessory structure shall be firmly anchored to prevent flotation, collapse and lateral movement.
 8. Service facilities such as electrical, mechanical and heating equipment must be elevated or floodproofed to or above the base flood elevation.
 9. The structure must not increase the flood levels in the floodway.
- f. Existing contour intervals of site and elevations of existing structures must be included on plan proposal (optional for b, c, d, e communities).
- g. No person shall change from business/commercial to residential use of any structure or property located in the floodway of a special flood hazard area so as to result in a use or expansion that could increase the risk to the occupants.
- h. The space below the lowest floor:
1. Free of obstructions as described in FEMA Technical Bulletin 5 "Free of Obstruction Requirements for Buildings Located in Coastal High Hazard Area in Accordance with the National Flood Insurance Program"; or
 2. Constructed with open wood lattice-work, or insect screening intended to collapse under wind and water without causing collapse, displacement, or other structural damage to the elevated portion of the building or supporting piles or columns; or,
 3. Designed with an enclosed area less than 300 square feet that is constructed with non-supporting breakaway walls that have a design safe loading resistance of not less than ten or more than 20 pounds per square foot.

(3) Base Flood Elevation and Floodway Data

a. 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.

b. 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.

c. 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 floodproofing non-residential structures to or above the base flood level.

(e) *Definitions.* Unless otherwise specified, the definitions provided for below shall only be applicable to Section 21-188. 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 and to give 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 (for a community with AO or AH zones only). 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.

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 a building having its floor subgrade (below ground level) on all sides.

Building – see definition for “Structure”.

Coastal A zone. Area within a special flood hazard area, landward of a V zone or landward of an open coast without mapped V zones. The principal source of flooding must be astronomical tides, storm surges, seiches, or tsunamis, not riverine flooding. During the base flood conditions, the potential for breaking wave heights shall be greater than or equal to 1.5 feet.

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 other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.

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). (required).

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 Insurance Administrator has delineated both the special hazard areas and the risk premium zones applicable to the community. A FIRM that has been made available digitally is called a digital flood insurance rate map (DFIRM).

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 a designated height. For the purposes of these regulations, the term "regulatory floodway" is synonymous in meaning with the term "floodway".

Freeboard. A factor of safety usually expressed in feet above a flood level for purposes of floodplain management. "Freeboard" tends to compensate for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions, such as wave action, bridge openings, and the hydrological effect of urbanization of the watershed.

Functionally dependent use or facility. A use 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.

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 (a listing maintained by the Department of the 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 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 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.

Limit of moderate wave action (LiMWA). An advisory line indicating the limit of the 1.5-footwave height during the base flood.

Lowest floor. The lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor; *Provided*, that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of § 60.3.

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 “manufactured home” does not include a “recreational vehicle”.

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. (required)

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. (required)

Recreational Vehicle – A vehicle which is registered and inspected: (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 (for community with AO, AH, or VO Zones only) – 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. After detailed ratemaking has been completed in preparation for publication of the flood insurance rate map, Zone A usually is refined into zones A, AO, AH, A1-30, AE, A99, AR, AR/A1-30, AR/AE, AR/AO, AR/AH, AR/A, VO, or V1-30, VE or V. For purposes of these regulations, the term "special flood hazard area" is synonymous in meaning with the phrase "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. 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. For insurance purposes, "structure" means:

- (1) A building with two or more outside rigid walls and a fully secured roof, that is affixed to a permanent site;

- (2) A manufactured home ("a manufactured home", also known as a mobile home, is a structure; built on permanent chassis, transported to its site in one or more sections, and affixed to a permanent foundation); or
- (3) A travel trailer without wheels, built on a chassis and affixed to a permanent foundation, that is regulated under the community's floodplain management and building ordinances or laws.

For the latter purpose, "structure" does not mean recreational vehicle or a park trailer or other similar vehicle, except as described in paragraph (3) of this definition, or a gas or liquid storage tank.

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

Substantial Improvement – Any reconstruction, rehabilitation, addition or other improvements to a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the “start of construction” of the improvement. This term includes structures which have incurred “substantial damage”, regardless of the actual repair work performed. The term does not, however, include:

1. Any project 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 the “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. Construction 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.

(Ord. No. 83-1, § 2, 1-24-1983; Ord. No. 94-12, § 1, 6-27-1994; Ord. No. 10-20, § 1, 10-18-2010; Ord. No. 13-14, § 1, 9-23-2013)

State Law reference — General purposes of zoning ordinances, RIGL § 45-24-30(10).

SECTION 2. This Ordinance shall take effect upon passage and all Ordinances or parts of Ordinances inconsistent herewith are hereby repealed.

First Read at the Town Council Meeting of February 11, 2019 and referred to the Town Council Meeting of March 11, 2019 for Second Reading and Consideration of Adoption. Continued to the Town Council Meeting of March 25, 2019.

Adopted at the Town Council Meeting of March 25, 2019.

Jeannette Alyward
Town Clerk