



Flood Management Appeal Board Agenda

Town of Swansboro

Tuesday, February 21, 2023

I. Call to Order

II. Approval of Minutes

- [a.](#) March 2, 2020 Special Meeting Minutes

III. New Business

- [a.](#) **Variance Request for 203 Church Street/Visitor's Center**

Presenter: Andrea Correll, Planner, AICP

In accordance with the Flood Damage Prevention Ordinance Section 152.405 Definitions; Substantial Improvement, the Town seeks a Variance as provided under 2) Any alteration of a historic structure, provided that alteration will not preclude the structure's continued designation as a historic structure and the alteration is approved by variance issued pursuant to Section 152.417.

Recommended Action: 1 – Hold Public Hearing; 2 – Approval or Denial of the Variance requested based on Section 152.429 and the evidence entered into the record.

IV. Chairman/Board Thoughts/Staff Comments

V. Public Comments

VI. Adjournment

**TOWN OF SWANSBORO
FLOOD MANAGEMENT APPEAL BOARD
SPECIAL MEETING MINUTES
MARCH 2, 2020**

Item II - a.

Call to Order

The meeting was called to order at 3:07 pm. Board members in attendance were: John Freshwater, Junior Freeman, and Paul Wysocki. The board had one vacancy.

Oath of Office

Deputy Clerk, Alissa Fender issued the oath of office to all board members in attendance.

Election of Chair & Vice Chair

On a motion by Mr. Freeman, seconded by Mr. Wysocki, John Freshwater was elected chair. The vote was unanimous.

On a motion by Mr. Freshwater, seconded by Mr. Wysocki, Junior Freeman was elected vice-chair. The vote was unanimous.

Approval of Minutes

On a motion by Mr. Freeman seconded by Mr. Freshwater, the September 2, 2015 meeting minutes were approved unanimously.

New Business

Flood Damage Prevention Ordinance Update

Planner, Jennifer Ansell explained that the Preliminary Flood Insurance Rate Maps (FIRM) were released to the Town on June 30, 2016. A 90-day appeal period was initiated following their release, and no responses were received. FEMA had issued the Town a Letter of Final Determination, which contained an Effective Date for the new FIRMs of June 19, 2020. As a participating community in the National Flood Insurance Program (NFIP), the Town is required to update our Flood Damage Prevention Ordinance with the new map references before the Effective Date of the new FIRMs.

Mrs. Ansell reviewed the following items of the draft ordinance that needed reviewing and a determination on.

- “Non-Conversion Agreement” means a document stating that the owner will not convert or alter what has been constructed and approved. Violation of the agreement is considered a violation of the ordinance and, therefore, subject to the same enforcement procedures and penalties. The agreement must be filed with the recorded deed for the property. The agreement must show the clerk’s or recorder’s stamps and/or notations that the filing has been completed.
- (4) Elevated Buildings
 - (b) Shall not be temperature-controlled or conditioned;
 - (f) Property owners shall be required to execute and record a non-conversion agreement prior to issuance of a building permit declaring that the area below the lowest floor shall not be improved, finished or otherwise converted to habitable

space the Town of Swansboro will have the right to inspect the enclosed area. This agreement shall be recorded with the Onslow County Register of Deeds and shall transfer with the property in perpetuity.

- (g) Release of non-conversion agreement. If a property which is bound by a non-conversion agreement is modified to remove enclosed areas below the BFE, then the owner may request a release of the non-conversion agreement after staff inspection and submittal of confirming documentation.
- “Regulatory Flood Protection Elevation” means the “Base Flood Elevation” plus the “Freeboard”. In “Special Flood Hazard Areas” where Base Flood Elevations (BFEs) have been determined, this elevation shall be the BFE plus Insert freeboard [four (4) feet (Four feet is the state recommended freeboard)] feet freeboard). In “Special Flood Hazard Areas” where no BFE has been established, this elevation shall be at least Insert feet [Four (4) feet is a state-recommended elevation, two (2) feet is a state-recommended minimum] feet above the highest adjacent grade.
- STANDARDS FOR COASTAL A ZONES (ZONE CAZ) LiMWA

After discussion the board provided the following feedback:

- Deletion of “*Non-Conversion Agreement*”
- Deletion of sections (b)(f) and (g) of (4) *Elevated Buildings*
- A maximum freeboard of 1 foot was desired
- Issue notification to property owners affected by the new LiMWA zone

Eryn Futral, NFIP Planner for the Eastern Branch of the NC Department of Public Safety was also present via conference call.

The Board requested that Staff gather the applicable Building Code references related to the LiMWA and provide them to the board so that they could provide a recommendation at a future meeting.

Rules and Procedures Amendment

The Flood Management Appeals Board Rules and Procedures were amended to reflect the changes in the board meeting schedule from meeting semi-annually to meeting as called.

Adjournment

On a motion by Mr. Freeman, seconded by Mr. Freshwater the meeting adjourned at 4:20 pm.



Flood Management Appeal Board Meeting Agenda Item Submittal

Item To Be Considered: Variance Request for 203 Church Street/Visitor's Center

Board Meeting Date: February 21, 2023

Prepared By: Andrea Correll, Planner, AICP

Overview: In accordance with the Flood Damage Prevention Ordinance Section 152.405 Definitions; Substantial Improvement, the Town seeks a Variance as provided under 2) Any alteration of a historic structure, provided that alteration will not preclude the structure's continued designation as a historic structure and the alteration is approved by variance issued pursuant to Section 152.417.

Interior rehabilitation to the Visitor's Center (Tucker Little House) at 203 Church Street is consistent with all other sections of the Flood Damage Prevention Ordinance apart from the second clause in the definition listed above. This portion of the definition is not in keeping with the Substantial Improvement/ Substantial Damage Desk Reference FEMA P-758 nor Flood Damage Prevention Ordinance Part III: Provision for Flood Hazard Reduction: Section 154.441 Specific Standards (E) and Additional Improvements (4) (b).

In preparation for the hearing, please find attached variance procedures in Section 154.429. It is noted that on April 30, 2014, the Flood Board members received training from Randy Mundt at the North Carolina Emergency Management Floodplain Management Section that variances may be issued for repair/rehabilitation of historic structures.

Background Attachment(s): Flood Damage Prevention Regulation References, Substantial Improvement FEMA Historic Structures, and Variance Workshop Slide 4.30.2014.

Action: Approval or Denial of the Variance requested based on Section 152.429 and the evidence entered into the record.

FLOOD DAMAGE PREVENTION

PART I: GENERAL PROVISIONS

§ 152.405 DEFINITIONS.

Unless specifically defined below, words or phrases used in this subchapter shall be interpreted so as to give them the meaning they have in common usage and to give this subchapter it's most reasonable application.

SUBSTANTIAL IMPROVEMENT. Any combination of repairs, reconstruction, rehabilitation, addition , or other improvement of a structure , taking place during any one year period for which the cost equals or exceeds 50% 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 either:

- (1) Any correction of existing violations of state or community health, sanitary, or safety code specifications which have been identified by the community code enforcement official and which are the minimum necessary to assure safe living conditions; or
- (2) Any alteration of a historic structure, provided that the alteration will not preclude the structure's continued designation as a historic structure and the alteration is approved by variance issued pursuant to § 152.417.

Part III: Provisions for Flood Hazard Reduction

152.441 Specific standards

(E) Additions/improvements.

(4) Any combination of repair, reconstruction, rehabilitation, addition or improvement of a building or structure taking place during a one year period, the cumulative cost of which equals or exceeds 50% of the market value of the structure before the improvement or repair is started must comply with the standards for new construction. For each building or structure, the one year period begins on the date of the first improvement or repair of that building or structure subsequent to the effective date of this subchapter. If the structure has sustained substantial damage, any repairs are considered substantial improvement regardless of the actual repair work performed. The requirement does not, however, include either:

(a) Any project for improvement of a building required to correct existing health, sanitary or safety code violations identified by the Building Official and that are the minium necessary to assume safe living conditions; or

(b) Any alteration of a historic structure provided that the alteration will not preclude the structure's continued designation as a historic structure.

§ 152.429 VARIANCE PROCEDURES.

(A) The Flood Management Appeals Board, as established by the Town of Swansboro hereinafter referred to as the Appeal Board, shall hear and decide requests for variances from the requirements of this subchapter.

(B) Any person aggrieved by the decision of the Appeal Board may appeal such decision to the Court, as provided in Chapter 7A of the North Carolina General Statutes.

(C) Variances may be issued for:

(1) The repair or rehabilitation of historic structures upon the determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and that the variance is the minimum necessary to preserve the historic character and design of the structure;

(2) Functionally dependent facilities if determined to meet the definition as stated in § 152.405, provided provisions of divisions (1)(2), (3), and (5) of this section have been satisfied, and such facilities are protected by methods that minimize flood damages during the base flood and create no additional threats to public safety; or

(3) Any other type of development, provided it meets the requirements stated in this section.

(D) In passing upon variances, the Appeal Board shall consider all technical evaluations, all relevant factors, all standards specified in other sections of this subchapter, and:

- (1) The danger that materials may be swept onto other lands to the injury of others;
- (2) The danger to life and property due to flooding or erosion damage;
- (3) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
- (4) The importance of the services provided by the proposed facility to the community;
- (5) The necessity to the facility of a waterfront location as defined under § 152.405 as a functionally dependent facility, where applicable;
- (6) The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;
- (7) The compatibility of the proposed use with existing and anticipated development;
- (8) The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
- (9) The safety of access to the property in times of flood for ordinary and emergency vehicles;

(10) The expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site; and

(11) The costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, and streets and bridges.

(E) A written report addressing each of the above factors shall be submitted with the application for a variance.

(F) Upon consideration of the factors listed above and the purposes of this subchapter, the Appeal Board may attach such conditions to the granting of variances as it deems necessary to further the purposes and objectives of this subchapter.

(G) Any applicant to whom a variance is granted shall be given written notice specifying the difference between the BFE and the elevation to which the structure is to be built and that such construction below the BFE increases risks to life and property, and that the issuance of a variance to construct a structure below the BFE may result in increased premium rates for flood insurance up to \$25 per \$100 of insurance coverage. Such notification shall be maintained with a record of all variance actions, including justification for their issuance.

(H) The Floodplain Administrator shall maintain the records of all appeal actions and report any variances to the FEMA and the State of North Carolina upon request.

(I) Conditions for variances.

(1) Variances shall not be issued when the variance will make the structure in violation of other federal, state, or local laws, regulations, or ordinances.

(2) Variances shall not be issued within any designated floodway or non-encroachment area if the variance would result in any increase in flood levels during the base flood discharge.

(3) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

(4) Variances shall only be issued prior to development permit approval.

(5) Variances shall only be issued upon:

(a) A showing of good and sufficient cause;

(b) A determination that failure to grant the variance would result in exceptional hardship; and

(c) A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, or extraordinary public expenses, create nuisance, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.

(J) A variance may be issued for solid waste disposal facilities or sites, hazardous waste management facilities, salvage yards, and chemical storage facilities that are located in special flood hazard areas provided that all of the following conditions are met.

- (1) The use serves a critical need in the community.
 - (2) No feasible location exists for the use outside the special flood hazard area.
 - (3) The reference level of any structure is elevated or flood-proofed to at least the regulatory flood protection elevation.
 - (4) The use complies with all other applicable federal, state and local laws.
 - (5) The Town of Swansboro has notified the Secretary of the North Carolina Department of Public Safety of its intention to grant a variance at least 30 calendar days prior to granting the variance.
- (Ord. 2005-03, passed 3-15-2005; Am. Ord. 2012-04, passed 4-17-2012; Am. Ord. 2014-013, passed 6-17-2014; Am. Ord. 2020-03, passed 6-8-2020)



Substantial Improvement/ Substantial Damage Desk Reference

FEMA P-758 / May 2010



FEMA

- If the FIRM has been revised and the SFHA has widened to include more area, that area is now subject to the NFIP requirements. For example, areas that were previously designated X zone may now be shown as A zone or V zone. Improvements and repairs to buildings that were outside of the SFHA but are now in the revised SFHA must be evaluated to determine if the work is SI/SD.
- If the FIRM has been revised and the flood zone or BFE changed, a determination that work is a substantial improvement requires that the building meet NFIP requirements for new construction based on the revised flood zone and revised BFE.
- If the FIRM has been revised and either the floodway boundaries are changed or a floodway is newly delineated, a determination that improvements or repairs to a building are SI/SD may require an encroachment analysis.

6.5 Requirements for Certain Structures

This section describes how SI/SD is addressed for certain types of buildings in accordance with the NFIP floodplain management requirements, including:

- Historic structures (Section 6.5.1)
- Manufactured homes (Section 6.5.2)
- Accessory structures and certain agricultural structures (Section 6.5.3)

6.5.1 Historic Structures

The NFIP gives special consideration to the unique value of designated historic buildings and structures. Provided such structures retain their designations, communities do not have to require them to be brought into compliance if they will be substantially improved or have been substantially damaged. Section 3.4.1 includes the NFIP's definition for "historic structures." The term includes structures that are: (1) listed or preliminarily determined to be eligible for listing in the National Register of Historic Places; (2) certified or preliminarily determined by the Secretary of the U.S. Department of Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined to qualify as a registered historic district; or (3) designated as historic site under a State or local historic preservation program that is approved by the Secretary of the U.S. Department of Interior. The definition does not include structures that are merely old, those that residents refer to as historic, or those that happen to be located in historic districts.

The NFIP floodplain management requirements contain two provisions that are intended to provide relief for historic structures located in SFHAs:

- (1) The NFIP definition of "substantial improvement" includes the following exclusion for historic structures: *"Any alteration of a 'historic structure,' provided that the alteration will not preclude the structure's continued designation as an 'historic structure'."* The exclusion also applies to historic structures that have been substantially damaged. This provision allows communities to exempt historic structures from the SI/SD requirements of the NFIP.

NC Floodplain Mapping presents NFIP & Variance Workshop

Swansboro Town Hall 30 April 2014

Presenter:

Randy Mundt, AICP, CFM



North Carolina Emergency Management
Floodplain Management Section



Item III - a.



Variance Procedures

➤ Variances may be issued for:

- Repair/rehabilitation of historic structures
- "Functionally Dependent Facilities"*
- Any other type of development, provided it meets the requirements of the Ordinance

*narrowly defined: limited to docking or port facilities necessary for loading cargo or passengers, shipbuilding, or ship repair. Does not include long-term storage, manufacture, sales or service facilities.