

FLOOD PLAIN DEVELOPMENT GUIDE

Introduction

The City of Albany Flood Damage Prevention Law, Albany City Code § 375-143 through § 375-172.4 are mandated by the Federal Emergency Relief Agency and are a common-sense set of standards which will improve the resiliency of our civic infrastructure, protect private investment, and improve public safety as the City of Albany adapts to a warming climate.

The Flood Damage Prevention Law ***requires that people or companies developing land is designated floodplain areas obtain a floodplain development permit*** from the Department of Buildings & Regulatory Compliance. This guide is meant to help developers navigate the flood plain development permit process.

Finding out if your proposed project is in the floodplain

Based on historic flood and other data, FEMA has designated certain areas of the country, including certain areas of Albany, as being on part of the national floodplain. FEMA provides a tool at <http://msc.fema.gov/portal> where you can search for an address and see whether it is in the floodplain and therefore subject to the Flood Damage Prevention Law. Generally speaking, properties that are within a half mile of the Hudson River or adjoining tributaries, such as the Normanskill, are within in the floodplain. Feel free to contact our staff if you have any questions about whether your project is located in the floodplain.

When work requires a floodplain development permit

Albany City Code § 375-153 requires a floodplain development permit be issued for “all construction and other development to be undertaken” in a FEMA-designated floodplain. This includes major renovations or changes to an existing building’s infrastructure and all new construction.

The floodplain construction guidelines

The floodplain construction guidelines are set out in Albany City Code § 375-168 through § 375-172.2. Below are the key, relevant provisions of those guidelines.

§ 375-168. Anchoring. New structures and substantial improvement to structures in areas of special flood hazard shall be anchored to prevent flotation, collapse, or lateral movement during the base flood. This requirement is in addition to applicable state and local anchoring requirements for resisting wind forces.

§ 375-169. Construction materials and methods.

A. New construction and substantial improvements to structures shall be

constructed with materials and utility equipment resistant to flood damage.

B. New construction and substantial improvements to structures shall be constructed using methods and practices that minimize flood damage.

C. Enclosed areas below lowest floor.

(1) For enclosed areas below the lowest floor of a structure within Zones A1-A30, AE or AH, and also Zone A . . . new and substantially improved structures shall have fully enclosed areas below the lowest floor that are usable solely for the parking of vehicles, building access or storage in an area other than a basement and which are subject to flooding, designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a licensed professional engineer or architect or meet or exceed the following minimum criteria:

a. A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding; and

b. The bottom of all such openings no higher than one foot above the lowest adjacent finished grade.

(2) Openings may be equipped with louvers, valves, screens or other coverings or devices, provided that they permit the automatic

entry and exit of floodwaters. Enclosed areas subgrade on all sides are considered basements and are not permitted.

§ 375-170. Utilities.

A. *New and replacement electrical equipment . . . shall be located at least two feet above the base flood elevation or be designed to prevent water from entering and accumulating within the components during a flood and to resist hydrostatic and hydrodynamic loads and stresses.* Electrical wiring and outlets, switches, junction boxes and panels shall also be elevated or designed to prevent water from entering and accumulating within the components unless they conform to the appropriate provisions of the electrical part of the Building Code of New York State or the Residential Code of New York State for location of such items in wet locations;

B. New and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the system;

C. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters. Sanitary sewer and storm drainage systems for buildings that have openings below the base flood elevation shall be provided with automatic backflow valves or other automatic backflow devices that are installed in each discharge line passing through a building's exterior wall; and

D. On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

§ 375-171. Residential structures; elevation.

The following standards apply to new and substantially improved residential structures located in areas of special flood hazard, in addition to the requirements in § 375-165, Subdivision proposals; § 375-166, Encroachments; and § 375-167, Standards for all structures.

A. Within Zones A1-A30, AE and AH and also Zone A if base flood elevation data are available, new construction and substantial improvements shall have the lowest floor (including basement) elevated to or above two feet above the base flood elevation.

(note: Albany City Code § 375-171 does not provide special regulations for residential properties in Zone X)

§ 375-172. Nonresidential structures.

The following standards apply to new and substantially improved commercial, industrial and other nonresidential structures located in areas of special flood hazard, in addition to the requirements in § 375-165, Subdivision proposals; § 375-166, Encroachments; and § 375-167, Standards for all structures.

A. Within Zones . . . AE . . . new construction and substantial improvements of any nonresidential structure shall either:

(1) Have the lowest floor, including basement or cellar, elevated to or above two feet above the base flood elevation; or

(2) Be floodproofed so that the structure is watertight below two feet above the base flood elevation, including attendant utility and sanitary facilities, with walls substantially impermeable to the passage of water. All structural components located below the base flood level must be capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy.

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C. If the structure is to be floodproofed, a licensed professional engineer or architect shall develop and/or review structural design, specifications, and plans for construction. A floodproofing certificate or other certification shall be provided to the local administrator that certifies the design and methods of construction are in accordance with accepted standards of practice for meeting the provisions of Subsection A(2) above, including the specific elevation (in relation to mean sea level) to which the structure is to be floodproofed.

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When the floodplain development guidelines do not apply

There are three instances in which the floodplain development guidelines do not apply. Each of them is discussed below in turn.

A. Substantial Improvement

While Albany City Code § 375-153 requires a permit for “all construction and other development to be undertaken”, it does not require that the floodplain development guidelines be complied with unless the development is a “substantial improvement”.

A “**substantial improvement**” is an improvement which costs more than 50% of the fair market value of the building prior to the beginning of the project. The code does not establish how a fair market value is to be established but evidence of a tax assessment or of the sales price of similar comparable properties will be acceptable.

B. Repairs to Correct Life/Safety Related Code Violations

“Any project for improvement of a structure **to correct existing violations** of . . . code[s] . . . identified by the local code enforcement official and **which are the minimum necessary to assure safe living conditions**” will not trigger an obligation to comply with the floodplain development guidelines.

C. Historic Structures

“Alterations” to historic structures may not be required to comply with the floodplain development guidelines. The code identifies an “historic structure” as a structure which is:

- A. ***Listed individually in the National Register of Historic Places*** . . . 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 historical 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 . . . ; 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.

When to apply for a floodplain development permit

The floodplain development permit must be submitted with the underlying building permit because a floodplain development permit is contingent on the issuance of a building permit certifying compliance with all other relevant city and NYS Uniform Building codes.

Though we cannot grant preliminary permit approvals, we understand the investment necessary to submit a building and flood plain development permit application and so we are happy to discuss your project prior to the submission of a formal application. Additionally, we will work with you to bring our project into compliance with the relevant laws after the applications have been submitted.

Appeals & Variances

Under Albany City Code § 375-172.3 an applicant who has been denied a floodplain development permit may apply for a variance from the floodplain development guidelines or

challenge a determination of the Department of Buildings & Regulatory Compliance by appealing the decision to the City of Albany Board of Zoning Appeals.

The BZA will consider the following when evaluating an application for a variance:

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, where applicable;
6. The availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;
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 of that area;
9. The safety of access to the property in times of flood for ordinary and emergency vehicles;
10. The costs to local governments and the dangers associated with conducting search-and-rescue operations during periods of flooding;
11. 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
12. The costs of providing governmental services during and after flood conditions, including search-and-rescue operations, maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems and streets and bridges.

In addition to these factors, under Albany City Code § 375-172.4, the BZA will consider the size of the lot, the historical value of the building and other measures that are taken to minimize the damage the building would suffer in the event of a flood. No variance will be granted without a written justification showing 1) “good and sufficient cause”, 2) “a determination that failure to grant the variance would result in exceptional hardship to the applicant” and 3) “a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public or conflict with existing local laws or ordinances.”

Any variances granted exempting structures from the flood plain development guidelines must be the minimum variance necessary and may be made conditional on factors as deemed necessary by the BZA.

Variances for Historic Structures in the Floodplain

In addition to the exemption from the guidelines for “alterations” to “historic structures” the guidelines authorize the BZA to grant exemptions for the “repair and rehabilitation” of historic structures where the work will not preclude the building being designated or from maintaining its designation as an historic structure.