

ENGINEERING CONSISTENCY MEETING

MAY 2011

MEETING MINUTES

Attendees:

Michael L. Clar, P.E., C.F.M.
Michael A. Clendaniel
John J. Gysling, P.E., C.F.M.
S. Douglas Hokuf, Jr., P.E.
Eric T. Laramore, P.E.
Stacy M. McNatt, P.E.

Purpose: To promote consistency among the engineering staff in the application of the County Code and Departmental Policies. During the meetings, current regulatory issues are discussed. When a consensus is achieved, the decision is documented. The goal is then to clearly communicate Departmental positions to the professional engineering community by providing a copy of the meeting minutes on the County's engineering internet page. It is the intent of the Engineering Section to apply these decisions uniformly; however, due to the uniqueness of each land development application all plans are reviewed on a case by case basis.

Issues Discussed:

1. Process to seek approval for a non-permitted use in the floodplain

Question: What avenue of appeal is available to an applicant seeking to establish a non-permitted use, per table 40.10.210 of the New Castle County Code, in the floodplain?

Discussion: In accordance with the mandates of the NFIP to regulate new construction within the limits of the 100-year floodplain, the New Castle County Code strictly limits the permitted uses within the floodplain, as detailed in Table 40.10.210, and further regulates permitted uses in the floodplain as detailed in Sections 40.10.310 – 317. However, the Code recognizes that strict adherence to these regulation may cause a hardship and provides recourse for non-permitted activities in the floodplain via Beneficial Use (40.10.313). The criterion for a Beneficial Use is detailed in Sections 40.31.600 – 630.

Requests for Beneficial Use in the floodplain are decided by the Board of Adjustment (BOA) which requires a recommendation from both the Department of Land Use and the Resource Protection Area Technical Advisory Committee (RPATAC). If the applicant feels aggrieved by the BOA decision, he may appeal to County Council (Table 40.30.110). If the Beneficial Use request is approved, the applicant shall also obtain approval of a floodplain development permit and any associated construction plans. (See attached flow chart)

Decision: Applicant's seeking to establish a non-permitted use, per table 40.10.210 of the New Castle County Code, in the floodplain shall receive Beneficial Use approval and demonstrate compliance with all applicable Codes and Regulations.

2. What to do when the FEMA AE floodplain map and base flood elevation disagree

Question: What is the limit of the 100-year floodplain when the mapped FEMA AE floodplain line and the associated base flood elevation line disagree?

Discussion: For floodplains designated as AE on the FEMA FIRM Panel, both a mapped floodplain line and a base flood elevation for the 100-year flood have been established. As plans are prepared and detailed site topography established, it is sometimes found that the mapped floodplain line and associated base flood elevation do not match. Although the FEMA mapped floodplain line ultimately governs as the limit for the floodplain, New Castle County Code regulates structures to their relationship with the base flood elevation. Therefore, both floodplain lines, mapped and base flood elevation, shall be delineated on the plan. When the base flood elevation line, as interpreted by topographic contours, is more restrictive than the mapped floodplain line and the Department believes that it has a real and material effect on the proposed development then a Letter of Map Change (LOMC) shall be submitted by the applicant to FEMA to certify the limits of the floodplain. If, however, the mapped floodplain line is more restrictive than the base flood elevation line, the submission of a LOMC is at the applicant's discretion. Lastly, if the applicant believes that the base flood elevation is too conservative, a hydrologic and hydraulic analysis pursuant to FEMA standards may be submitted for FEMA approval of a Letter of Map Revision (LOMR). As this discussion is limited to only those areas in a FEMA AE flood zone, the size of the development (acres or lots) is immaterial.

Example #1, the base flood elevation is more restrictive than the mapped floodplain line on the FEMA FIRM Panel: Both floodplain lines, mapped and base flood elevation, shall be delineated on the plan. If the Department believes that the base flood elevation has a real and material effect on the proposed development, then a Letter of Map Change (LOMC) shall be submitted by the applicant to FEMA to certify the limit of the floodplain prior to plan recordation or permit issuance. If the Department determines that a real and material effect exists, but the applicant believes that the base flood elevations are too conservative, a hydrologic and hydraulic analysis pursuant to FEMA standards may be submitted for FEMA approval of a Letter of Map Revision (LOMR). If, however, the Department determines that the base flood elevation line has no real and material effect on the proposed development, no further action is required.

Example #2, the mapped floodplain line on the FEMA FIRM Panel is more restrictive than the base flood elevation: Both floodplain lines, mapped and base flood elevation, shall be delineated on the plan. If the applicant believes that the FEMA mapped floodplain is too restrictive for the proposed development, the applicant may submit a LOMC to FEMA to certify the limit of the floodplain to the base flood elevation line.

Decision: The FEMA FIRM Panel mapped line always governs as the limit for the floodplain. However, as New Castle County Code regulates structures in relationship to the base flood elevation both the mapped floodplain line and associated base flood elevation line shall be depicted on the plan. If the Department believes that the base flood elevation has a real and material effect on the proposed development, then a Letter of Map Change (LOMC) shall be submitted by the applicant to FEMA to certify the limit of the floodplain. Other options for relief from either the mapped floodplain line or the base flood elevation line can be sought at the applicant's discretion.

Process for seeking approval for a non-permitted use in the floodplain

