



MEMORANDUM

Town of Nags Head

Planning & Development Department

To: Planning Board
From: Michael Zehner, Director of Planning & Development
Date: November 13, 2020
Subject: Request to increase allowable area of enclosures below the Regulatory Flood Protection Elevation (RFPE)/Local Elevation Standard (LES)

As the Board is aware, the attached email from Keith Engelmeier, 210 Fairway Lane, Nags Head, was submitted for the Board's consideration. In summation, Mr. Engelmeier is requesting that the current 300 square foot limit for enclosures below the Regulatory Flood Protection Elevation/Local Elevation Standard be eased by increasing the allowable limit. This provision is included in Section 11.44.2.4.4. (highlighted), part of Section 11.44.2.4. included in its entirety below:

11.44.2.4. Elevated Buildings. Fully enclosed areas of new construction and substantially improved structures, which are below the regulatory flood protection elevation in AE, AO, Shaded X, or X Zones:

11.44.2.4.1. Shall not be designed or used for human habitation, but shall only be used for parking of vehicles, building access, or limited storage of maintenance equipment used in connection with the premises. Access to the enclosed area shall be the minimum necessary to allow for parking of vehicles (garage door) or limited storage of maintenance equipment (standard exterior door), or entry to the living area (stairway or elevator). The interior portion of such enclosed area shall not be finished or partitioned into separate rooms, except to enclose storage areas;

11.44.2.4.2. Shall not be temperature-controlled or conditioned Non-temperature controlled dehumidifiers may be used in enclosed areas and shall not result in the enclosed area being determined to be conditioned space;

11.44.2.4.3. Shall be constructed entirely of flood-resistant materials, up to the regulatory flood protection elevation;

11.44.2.4.4. Shall not, in areas governed by the local elevation standard, exceed 300 "square feet in area" below the reference level with the exception of crawl space construction, and shall also include flood openings to automatically equalize hydrostatic flood forces on walls by allowing for the entry and exit of floodwaters. For the purposes of this requirement, enclosures shall be measured to the outside of the wall framing (to calculate floor area) excluding the thickness of sheathing, siding, or trim applied to the outside of the framing. To meet this requirement, the openings must either be certified by a professional

engineer or architect or meet or exceed the following minimum design criteria:

11.44.2.4.4.1. A minimum of two flood openings on different sides of each enclosed area subject to flooding;

11.44.2.4.4.2. The total net area of all flood openings must be at least one square inch for each square foot of enclosed area subject to flooding or a minimum of one engineered square inch for each square foot of enclosed area for an engineered opening;

11.44.2.4.4.3. If a building has more than one enclosed area, each enclosed area must have flood openings to allow floodwaters to automatically enter and exit;

11.44.2.4.4.4. The bottom of all required flood openings shall be no higher than one foot above the adjacent grade;

11.44.2.4.4.5. Flood openings may be equipped with screens, louvers, or other coverings or devices, provided they permit the automatic flow of floodwaters in both directions; and

11.44.2.4.4.6. Enclosures made of flexible skirting are not considered enclosures for regulatory purposes, and, therefore, do not require flood openings. Masonry or wood underpinning, regardless of structural status, is considered an enclosure and requires flood openings as outlined above.

11.44.2.4.5. Shall allow, in coastal high hazard areas (zones VE), open wood latticework or insect screening, provided it is not part of the structural support of the building and is designed so as to breakaway, under abnormally high tides or wave action, without causing damage to the structural integrity of the building.

11.44.2.4.6. 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 Nags Head will have the right to inspect the enclosed area. This agreement shall be recorded with the Dare County Register of Deeds and shall transfer with the property in perpetuity.

11.44.2.4.7. Release of restrictive covenant. If a property which is bound by a nonconversion agreement is modified to remove enclosed areas below BFE, then the owner may request release of restrictive covenant after staff inspection and submittal of confirming documentation.

As this relates to Mr. Engelmeier's property, formerly, the property was located within an AE-9 flood zone, where the dwelling would have been subject to a 1' freeboard,

requiring the habitable area of the dwelling to be at an elevation of 10' or greater; under the previous ordinance and flood zone, the property would have been subject to the same limitations for enclosures below the RFPE as it is today. However, the property is now located within an X zone, and while the grade adjacent to the dwelling has an elevation of approximately 8', the property is now subject to the 9' LES.

Staff understands that it is Mr. Engelmeier's request that the Town/Board initiate the change as requested. Mr. Engelmeier has been made aware that he is able to initiate an amendment of the ordinance, and that the Board's feedback may be helpful if he would like to pursue such an amendment. As the Board may recall, a basis for the recommended and adopted LES was the belief that although properties were being removed for a regulatory flood zone, that they were no less susceptible to flooding than they were previously, and therefore, should continue to be regulated in a comparable manner. Additionally, the proposed LES was determined to be preferred because of the possibility that sometime in the future, properties that had been removed from a regulatory flood zone, such as Mr. Engelmeier's, may be placed back into such a zone and rendered noncompliant by changes and improvements that may have been made but for the establishment of the LES, and therefore subject to higher insurance premiums.

From: radiobug@verizon.net
To: [Planning Board](#)
Subject: Carport Enclosures !!
Date: Sunday, November 8, 2020 8:43:08 AM

To: Nags Head Planning Board:

My wife and I have been Nags Head homeowners since 1999 and have thoroughly enjoyed being

part-time members of the community. I am writing to request your assistance in dealing with a restriction

on ground level carport enclosures that exceed 300 square and are below the minimum 9 feet elevation above sea level.

(Note: I have been informed by a senior town staff member that the restriction should actually be 299 square feet

and since the Nags Head requirement is set at 300 square feet, there is apparently no favorable flood insurance

discount to the town. This seems to have been due to a misunderstanding of the federal regulation when the

ordinance was originally drafted.)

The secure unheated enclosure over the 300 sq. ft. limit that I would like to have built for our two car carport

is not a living space - it is for storage only. It is also important to note at the outset that any such construction

would be completed by a licensed NC contractor, fully in compliance with applicable building codes and subject

to a comprehensive inspection by Town inspectors. I see absolutely no difference if a less than 300 sq. ft storage

space floods as opposed to a 300+ sq. ft. storage space. As long as it is not a living space, any flood insurance

claim would not be significantly different. I would not be storing anything of great value in the enclosure - no furniture,

no expensive electronics, so a flood in the enclosed area would not require new floors, walls, paneling or other

expensive repairs that would normally be required for a flooded habitable living space. It would simply be an

enclosed unheated carport area to provide additional security and storage space for items that are too large or

bulky to reasonably store in the house !! Apparently there is another issue about variances being granted only

if the homeowner experiences a "hardship". As it was explained to me, in order for a variance to be granted, the

property owner has to prove that denial of the proposed use would create an undue hardship that in effect deprives

the owner of any kind of use for his or her property. Since our property still has other permitted uses for structures

built above the base flood elevation, the denial of additional ground floor enclosure for storage does not legally

constitute a hardship that would leave us with no other possible use for the property.

"Permitted uses" is key here. While our property may still be approved for other permitted uses, as a practical matter an easily accessible enclosed storage area for larger bulky items (bicycles, lawn tools and equipment etc.) can only make sense if it is constructed at the ground (below 9 ft.elevation) level. The fact that other permitted uses above the base flood level elevation would be approved does not solve the basic usability and accessibility problem. The intent is to create an easily accessible enclosed storage space only (not a living space) at the ground level and the current ordinance does not permit that.

I would ask that the Planning Board consider my request and investigate alternatives and possible recommendations to the Planning Director and the Town Commissioners in an effort to ease the restriction created by the the current ordinance. I have also identified two additional Village of Nags Head homeowners with ground levels below the 9 ft elevation level who wish to improve their properties by constructing additional ground level secure storage space that would exceed 300 square feet. I would be happy to discuss this issue with any (or all !) of the Planning Board members.

Thank You very much for your consideration !
Keith E Engelmeier 301 844-

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