

ORDINANCE NO. 2012-6

AN ORDINANCE OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, AMENDING CHAPTER 10 “FLOODS” IN ORDER TO UPDATE THE FLOODPLAIN MANAGEMENT REGULATIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the National Flood Insurance Program (the “NFIP”) offers flood insurance at more affordable rates than are generally available from private insurers; and

WHEREAS, in order for the residents of the Village of Key Biscayne (the “Village”) to be eligible for participation in the NFIP, the Village adopted floodplain management regulations on January 5, 1993; and

WHEREAS, the NFIP Community Rating System (the “CRS”) is a voluntary incentive program that recognizes and encourages community floodplain management activities that exceed the minimum NFIP requirements, allowing flood insurance premium rates to be discounted to reflect the reduced flood risk resulting from the community actions meeting the three goals of the CRS; and

WHEREAS, the Village has been in contact with the Federal Emergency Management Agency (“FEMA”) in order to determine how to improve the Village’s NFIP CRS rating, in order to provide additional savings to Village residents in their flood insurance; and

WHEREAS, Village staff has determined that certain changes that are coordinated with the latest edition of the Florida Building Code (FBC) may be implemented by the Village through the adoption of an amendment to the current floodplain management regulations ordinance; and

WHEREAS, the Village Council hereby finds and declares that adoption of this Ordinance is necessary, appropriate and advances the public interest.

NOW, THEREFORE, IT IS HEREBY ORDAINED BY THE VILLAGE COUNCIL OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, AS FOLLOWS:¹

Section 1. The preceding “Whereas” clauses are ratified and incorporated as the legislative intent of this Ordinance.

Section 2. Village Code Amended. The Village Council hereby amends Article II “Flood Damage Prevention”, Division 1 “Generally,” as follows:

Division 1. Generally

Sec. 10-21. - Definitions.

~~In construing the provisions of this article, where the context will permit and no definition is provided in this section, the definitions provided in F.S. ch. 403, as may be amended from time to time, and in the rules and regulations promulgated thereunder, as may be amended from time to time, shall apply. The following words and phrases when used in this article shall have the meanings ascribed to them in this section.~~

Unless otherwise expressly stated, the following words and terms shall, for the purposes of this article, have the meanings shown in this section. Where terms are not defined in this article and are defined in the Florida Building Code, such terms shall have the meanings ascribed to them in the Florida Building Code. Where terms are not defined in this article or the Florida Building Code, such terms shall have ordinarily accepted meanings such as the context implies.

Accessory Structure means a nonhabitable garage, or other Building or Structure, which is on a the same lot or parcel subordinate to and not forming an integral part of the main or principal Building but pertaining to the use of the main Building of property as the principal Structure and the use of which is incidental to the use of the principal Structure.

Area of Special Flood Hazard means the land in the Floodplain within a community subject to a one percent or greater chance of Flooding in any given year. This comprises the entirety of the Village.

¹ Revisions following first reading of the Ordinance are shown as follows: additions are indicated by highlighted underlined text, and deletions are indicated by highlighted underlined and ~~strike through~~ text.

ASCE 24 means the standard titled *Flood Resistant Design and Construction* that is referenced by the Florida Building Code. ASCE 24 is developed and published by the American Society of Civil Engineers, Reston, VA.

Base Flood means a Flood having a one percent chance of being equaled or exceeded in any given year. The Base Flood is commonly referred to as the “100-year Flood” or the “1-percent-annual chance Flood.”

Base Flood Elevation means the elevation, including wave height, relative to the National Geodetic Vertical Datum (NGVD), North American Vertical Datum (NAVD) or other datum specified on the Flood Insurance Rate Map (FIRM), for which there is a one percent chance in any given year that Flood levels will equal or exceed it. The Base Flood Elevations are indicated on the Village Flood Insurance Rate Map (FIRM).

Basement means ~~that portion~~ any area of a Building having its Floor subgrade (below ground level) on all sides.

~~Breakaway Wall means any type of wall, whether solid or lattice, and whether constructed of concrete, masonry, wood, metal, plastic, or any other suitable building material, which is not a part of the structural support of the Building and which is intended through design and construction to collapse under specific lateral loading forces without causing damage to the elevated portion of the Building or the supporting foundation system or any other Building to which such building materials might be carried by Flood waters.~~ a wall that is not part of the structural support of the Building and is intended through its design and construction to collapse under specific lateral loading forces, without causing damage to the elevated portion of the Building or supporting foundation system.

Building means any Structure built for support, shelter or enclosure for any occupancy or storage shall have the meaning as defined in the current edition of the Florida Building Code.

Building Official means the officer or other designated authority charged with the administration and enforcement of the Florida Building Code, or a duly authorized representative.

Building Permit means an official document or certificate issued by the Village which authorizes performance of specific activities that are determined to be compliant with the Florida Building Code.

Coastal Construction Control Line means the line established by the State of Florida pursuant to Section 161.053, Florida Statutes, and recorded in the official records of the Village, which defines that portion of the beach-dune system subject to severe fluctuations based on a 100-year storm surge, storm waves or other predictable weather conditions.

Coastal High Hazard Area means an Area of Special Flood Hazard extending from off-shore to the inland limit of a primary frontal dune along an open coast and any other area subject to high velocity ~~waters~~ wave action caused by, but not limited to, ~~hurricane wave wash~~ storms or seismic sources. The area is designated on a FIRM as zone VI-30, VE or V.

Design Flood means the Flood associated with the greater of the following two areas:

1. Area with a Floodplain subject to a 1-percent or greater chance of Flooding in any year; or
2. Area designated as a Flood Hazard Area on the Village's ~~Flood Hazard Map~~ FIRM, or otherwise legally designated.

Design Flood Elevation means the elevation of the "Design Flood," including wave height, relative to the datum specified on the Village's ~~legally designated Flood Hazard Map~~ FIRM. In areas designated as Zone AO, the Design Flood Elevation shall be the elevation of the highest existing grade of the Building's perimeter plus the depth number (in feet) specified on the ~~Flood Hazard Map~~ FIRM. In areas designated as Zone AO where the depth number is not specified on the map, the depth number shall be taken as being equal to 2 feet.

Development or Development Activity means any manmade change to improved or unimproved real estate, including but not limited to Buildings or other Structures, mining, dredging, filling, grading, paving, excavating, drilling operations, or ~~permanent~~ storage of materials or equipment or any other land disturbing activity.

Development Permit means any ~~b~~Building ~~p~~Permit, zoning permit, subdivision approval, rezoning, recertification, special exception, Variance or any other official action of the Village having the effect of permitting the Development of land.

Elevated Building means a nonbasement Building built to have the Lowest Floor elevated above the ground level by means of ~~fill~~, solid foundation perimeter walls, pilings, columns (posts and piers) or shear walls.

Existing Building and Existing Structure means any Buildings and Structures for which the Start of Construction commenced before January 29, 1972

Flood or Flooding means a general and temporary condition of partial or complete inundation of normally dry land areas from:

- (1) The overflow of ~~streams, rivers, or other~~ inland or tidal water;
- (2) Abnormally high tidal water or rising coastal waters resulting from severe storms, hurricanes or tsunamis; or

(3) The unusual and rapid accumulation or runoff of surface water from any source.

~~Flood Hazard Boundary Map means an official map of the Village, issued prior to the FIRM by the Federal Emergency Management Agency, where the boundaries of the Areas of Special Flood Hazard Areas have been identified.~~

Flood Damage-Resistant Materials means any construction material capable of withstanding direct and prolonged contact with Flood waters without sustaining any damage that requires more than cosmetic repair.

Flood Insurance Rate Map (FIRM) means ~~an~~ the official map of a community on which the Federal Emergency Management Agency has delineated both the ~~Areas of~~ Special Flood Hazard Areas and the risk premium zones applicable to the community.

Flood Insurance Study means the official report provided by the Federal Emergency Management Agency. The report contains Flood FIRM profiles, as well as the water surface elevation of the Base Flood and supporting technical data.

~~Floodplain or Floodprone Hazard Area means any land area susceptible to being inundated by water from any source~~ the greater of the following two areas:

(1) The area within a floodplain subject to a 1-percent or greater chance of flooding in any year.

(2) The area designated as a flood hazard area on the Village's flood hazard map, or otherwise legally designated.

Floodplain Administrator means the office or position designated and charged with the administration and enforcement of this article (may be referred to as the Floodplain Manager).

Floodplain Development Permit or Approval means an official document or certificate issued by the Village, or other evidence of approval or concurrence, which authorizes performance of specific Development activities that are located in Flood Hazard Areas and that are determined to be compliant with this article.

Floodproofing means any combination of structural and nonstructural additions, changes or adjustments (other than elevating) to Nonresidential Structures, which reduce or eliminate Flood damage to real estate or improved real property, water supply and sanitary sewage facilities, Structures, and their contents. ~~Floodproofing includes, by way of illustration and not limitation, the following measures:~~

~~(1) Anchorage to resist flotation and lateral movement.~~

~~(2) Installation of watertight doors, bulkheads and shutters, or similar methods of construction to protect against winds, wave action, or Flood waters.~~

~~(3) Reinforcement of walls to resist water pressures.~~

~~(4) Use of paints, membranes or mortars to reduce seepage of water through walls.~~

~~(5) Addition of mass or weight to Structures to resist flotation.~~

~~(6) Installation of pumps to lower water levels in Structures.~~

~~(7) Construction of water supply and wastewater treatment and disposal systems to prevent the entrance or infiltration of Flood waters.~~

~~(8) Pumping facilities or comparable practices for subsurface drainage systems for Buildings to relieve external foundation wall and Basement Flood pressures.~~

~~(9) Construction to resist rupture or collapse caused by water pressure or Flooding borne debris.~~

~~(10) Installation of valves or controls of sanitary and storm drains which will permit the drains to be closed to prevent backup of sewage and stormwaters into the Buildings or Structures. Gravity draining of Basements may be eliminated by mechanical devices.~~

~~(11) Location of all electrical equipment, circuits and installed electrical appliances in a manner which will assure they are not subject to Flooding and to provide protection from inundation by the Base Flood.~~

~~(12) Location of any Structure or storage facilities for chemicals, explosives, buoyant materials, flammable liquids or other toxic materials which could be hazardous to the public health, safety and welfare in a manner which will assure that the facilities are situated at elevations above the height associated with the regulatory protection elevation or are adequately Floodproofed to prevent flotation of storage containers, or damage to storage containers which could result in the escape of toxic materials into Flood waters.~~

~~*Floor* means the top surface of an enclosed area in a Building (including Basement), i.e., top of slab in concrete slab construction or top of wood flooring in wood frame construction. The term does not include the floor of a garage used solely for parking of vehicles.~~

~~*Functionally Dependent Structure or Facility Use* means a Structure-use which cannot be used for perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only such as a docking or port facilities necessary for the loading and unloading of cargo or passengers, shipbuilding, or ship repair, or seafood processing facilities. The term does not include longterm storage, manufacture, sales or service facilities.~~

Historic Building or Structure means any Structure that is determined eligible for the exception to the Flood Hazard Area requirements of the Florida Building Code, *Existing Building*, Chapter 11 Historic Buildings and:

- (1) Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
- (2) 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;
- (3) 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
- (4) Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
 - a. By an approved state program as determined by the Secretary of the Interior; or
 - b. Directly by the Secretary of the Interior in states without approved programs.

Letter of Map Change (LOMC) means an official determination issued by FEMA that amends ~~or revises~~ an effective Flood Insurance Rate Map or Flood Insurance Study. Letters of Map Change include:

Letter of Map Amendment (LOMA): An amendment based on technical data showing that a property was incorrectly included in a designated Special Flood Hazard Area. A LOMA amends the current effective Flood Insurance Rate Map and establishes that a specific property, portion of a property, or Structure is not located in a Special Flood Hazard Area.

Letter of Map Revision (LOMR): A revision based on technical data that may show changes to Flood zones, Flood elevations, Special Flood Hazard Area boundaries and floodway delineations, and other planimetric features.

Letter of Map Revision Based on Fill (LOMR-F): A determination that a Structure or parcel of land has been elevated by fill above the Base Flood Elevation is, therefore, no longer located within the Special Flood Hazard Area. In order to qualify for this determination, the fill must have been permitted and placed in accordance with the Village's floodplain management regulations.

Conditional Letter of Map Revision (CLOMR): A formal review and comment as to whether a proposed Flood protection project or other project complies with the minimum NFIP requirements for such projects with respect to delineation of Special Flood Hazard Areas. A CLOMR does not revise the effective Flood

Insurance Rate Map or Flood Insurance Study; upon submission and approval of certified as-built documentation, a Letter of Map Revision may be issued by FEMA to revise the effective FIRM.

Lowest Floor means the ~~Lowest~~ Lowest Floor of the lowest enclosed area of a Building or Structure (including Basement). An unfinished or Flood-resistant enclosure, usable solely for parking of vehicles, Building access or limited 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 ~~v~~Violation of the applicable nonelevation design requirements of this article and the latest edition of the Florida Building Code or ASCE 24.

Mangrove Stand means an assemblage of mangrove trees which consist of one or more of the following species: black mangrove (*Avicennia* ~~g~~Germinans); red mangrove (*Rhizophora* ~~m~~Mangle); white mangrove (*Languncularia* ~~r~~Racemosa) and buttonwood (*Conocarpus* ~~e~~Erecta).

~~*Manufactured Home (Trailer)* means a Structure, transportable in one or more sections, which is built on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities. The term "Manufactured Home" does not include a Recreational Vehicle; however, Park Trailers, Travel Trailers, and similar transportable structures placed on a site for 180 consecutive days or longer shall be regulated as Manufactured Homes.~~

Market Value means the price at which a property will change hands between a willing buyer and a willing seller, neither party being under compulsion to buy or sell and both having reasonable knowledge of relevant facts. As used in this article, the term refers to the Market Value of Buildings and Structures, excluding the land and other improvements on the parcel. Market Value may be established by a qualified independent appraiser, actual cash value (replacement cost depreciated for age and quality of construction), or tax assessment value adjusted to approximate Market Value by a factor provided by the Property Appraiser.

Mean Sea Level means the average height of the sea for all stages of the tide. It is used as a reference for establishing various elevations within the Floodplain. For purposes of this article, the term is synonymous with National Geodetic Vertical Datum (NGVD) (as corrected in 1929) or North American Vertical Datum (NAVD) (as corrected in 1988), which means a vertical control used as a reference for establishing varying elevations within a Floodplain.

New Construction means any Structure for which the Start of Construction commenced on or after January ~~20, 1993~~ 29, 1972. The term also includes any subsequent improvements to the Structure.

~~*New Manufactured Home Park or New Manufactured Home Subdivision* means a Manufactured Home Park or 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 January 20, 1993.~~

Nonresidential means any Building or Structure or portion thereof that is not classified Residential in accordance with the Florida Building Code, Building (Residential Group R or Institutional Group I) and ASCE 24.

Recreational Vehicle means a vehicle which is:

- (1) Built on a single chassis;
- (2) Four hundred square feet or less when measured at the largest horizontal projection;
- (3) Designed to be self-propelled or permanently towable by a light duty truck, as defined in 40 C.F.R. 86.082-2; and
- (4) Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel or seasonal use.

Residence or Residential means any lot, plot, parcel, tract, area, piece of land or Building used exclusively for family dwelling purposes or intended to be so used, including concomitant uses as specified in the prevailing land development regulations of the Village, and classified as Residential in accordance with the Florida Building Code, Building (Residential Group R or Institutional Group I) and ASCE 24.

Sand Dunes means naturally occurring accumulations of sand in ridges or mounds landward of the beach.

Special Flood Hazard Area means an area in the Floodplain subject to a 1 percent or greater chance of flooding in any given year. Special Flood Hazard Areas are shown on the Flood Insurance Rate Map as Zone A, AO, A1-A30, AE, A99, AH, V1-V30, VE and V. This comprises the entirety of the Village.

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 ~~p~~Permit was issued, provided the actual Start of Construction, repair, reconstruction, rehabilitation, addition, placement or other improvement was within 180 days of the permit date. The actual ~~s~~Start of Construction means the first placement of permanent construction of a Building (~~including a Manufactured Home~~) on a site, such as the pouring of slabs or footings, installation of piles, 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 erection of temporary forms; ~~nor does it include or~~ the installation on the property of Accessory Structures, such as garages or sheds not occupied as dwelling units or not part of the main Building. ~~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 means a walled and roofed Building, ~~including a gas or a liquid storage tank,~~ that is principally above ground, ~~a Manufactured Home, a gas or liquid storage tank, or other manmade facilities or infrastructures,~~ ~~including a gas or liquid storage tank.~~

Substantial Damage means damage of any origin sustained by a Structure whereby the cost of restoring the Structure to its before-damaged condition would equal or exceed 50 percent of the ~~m~~Market ~~v~~Value of the Structure before the damage occurred.

Substantial Improvement means any combination of additions, rehabilitation, repair, reconstruction, alteration, or other improvements to a ~~Building or~~ Structure, taking place during a one-year period in the "A" zones and a five-year period in the "V" zones, in which the cumulative cost equals or exceeds 50 percent of the ~~m~~Market ~~v~~Value of the Structure before the Start of Construction of the improvement. ~~The market value of the Structure shall be the appraised value of the Structure prior to the start of the initial work.~~

"Substantial Improvement" is considered to occur when the first alteration of any wall, ceiling, Floor, or other structural part of the Building commences, whether or not that alteration affects the external dimensions of the Structure. This term includes Structures which incur Substantial Damage regardless of actual work performed. The term does not include ~~either:~~ (1) ~~Any~~ project for improvement of a Structure required 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; ~~;~~

(2) ~~Any alteration of a Historic Structure, provided that the alteration will not preclude the Structure's continued designation as a Historic Structure for which a Variance has been granted pursuant to this article; or~~

(3) ~~Repairs for damage from any origin which are determined to be less than Substantial Damage.~~

Variance means a grant of relief from the requirements of this article ~~which permits construction in a manner otherwise prohibited by this article where specific enforcement would result in unnecessary hardship.~~

Violation means the failure of a Structure or other Development to be fully compliant with the provisions of this article. A Structure or other Development without the elevation certificate, Floodproofing certificate, other certifications, or other evidence of

compliance required of this article is considered to be in Violation until such certificate and documentation is submitted in a format satisfactory to the Building Official.

Sec. 10-22. - Statutory authority and legislative findings.

~~(a)~~ (1) The Legislature of the State of Florida has in F.S. chs. 166 and 163 granted to local governmental units, including the Village, the power, authority and responsibility to adopt regulations designed to promote the public health, safety and general welfare, as well as to adopt Development regulations controlling the use of land.

~~(b)~~ (2) The Flood ~~h~~Hazard ~~a~~Areas of the Village are subject to periodic inundation which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for Flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety and general welfare.

~~(c)~~ (3) The Flood losses described in subsection ~~(b)~~ (2) are caused by the cumulative effect of obstructions in Floodplains causing increases in Flood heights and velocities, and by the occupancy in Flood ~~h~~Hazard ~~a~~Areas by uses vulnerable to Floods or hazardous to other lands which are inadequately elevated, Floodproofed, or otherwise unprotected from Flood damages.

Sec. 10-23. - Intent and purpose.

It is the purpose of this article to promote the public health, safety and general welfare and to minimize public and private losses due to Flood conditions in specific areas by provisions designed to:

- (1) Restrict or prohibit uses which are dangerous to health, safety and property due to water or erosion hazards, or which result in damaging increases in erosion or in Flood heights or velocities;
- (2) Require that uses vulnerable to Floods, including facilities which serve such uses, be protected against Flood damage at the time of initial construction or Substantial Improvement;
- (3) Control the alteration of natural Floodplains, ~~stream channels~~, and natural protective barriers which are involved in the accommodation of Flood waters;
- (4) Control filling, grading, dredging, paving, excavation and other Development which may increase erosion or Flood damage; and
- (5) Prevent or regulate the construction of Flood barriers which will unnaturally divert Flood waters or which may increase Flood hazards to other lands.

Sec. 10-24. - Objectives.

The objectives of this article are to:

- (1) Protect human life and health;
- (2) Minimize expenditure of public money for costly Flood control projects;
- (3) Minimize the need for rescue and relief efforts associated with Flooding and generally undertaken at the expense of the general public;
- (4) Minimize prolonged business interruptions;
- (5) Minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets and bridges located in Floodplains;
- (6) Help maintain a stable tax base by providing for the sound use and ~~d~~Development of Floodprone Areas in such a manner as to minimize Flood-blight areas;
- (7) Ensure that potential home buyers are notified that property is in a Flood area; and
- (8) Comply with the requirements of the National Flood Insurance Program for community participation as set forth in the Title 44 Code of Federal Regulations, Section 59.22, so as to ensure the availability of Flood insurance for residents and property owners.

Sec. 10-25. - Lands to which this article applies.

This article shall apply to all areas ~~of~~ within the Village.

Sec. 10-26. - Basis for establishing the Areas of Special Flood Hazard Areas.

The Areas of Special Flood Hazard Areas identified by the Federal Emergency Management Agency in its Flood Insurance Study and Flood Insurance Rate Map for Miami-Dade County, Florida, dated January 20, 1993 September 11, 2009, with accompanying maps and other supporting data, and any amendments and revisions thereto, are adopted by reference and declared to be a part of this article. All lands within the Village are within an Area of Special Flood Hazard Area.

Sec. 10-27. - Development Permits required.

In addition to compliance with all other requirements of the Village Code of Ordinances and Chapter 30 (the "Zoning Code"), A a Floodplain Development Permit shall be required in conformance with the provision of this article prior to the commencement of any Development Activities.