



LONG BEACH COMMUNITY ALLIANCE

P.O. Box 167
Michigan City, Indiana 46360

Building Commissioner Larry Wall
Town of Long Beach
2400 Oriole Trail
Long Beach, Indiana 46360

Re: Building Commission Enforcement of Floodplain and Topography Ordinances

Dear Commissioner Wall:

The Long Beach Community Alliance (“LBCA”) would like to bring to your attention the Board of Zoning Appeals’ rulings on June 29, 2016 revoking the seawall permits issued for 2822, 2826, and 2900 Lake Shore Drive for failure to comply with Long Beach Floodplain Ordinances and Ordinance 154.112 pertaining to alteration of dune topography. I am attaching here the BZA Findings in those permit appeals. (Attachment A)

LBCA, as a representative of hundreds of Long Beach residents, spent significant resources in appealing the above referenced non-compliant permits and has an interest in ensuring that the Town ordinances protecting our sensitive beach areas are properly applied in the future so that we can avoid additional permit appeals. The FEMA Flood Insurance Rate Map (2013) shows that much of our Lake Michigan shore is located in a 100-year floodplain (Zone AE). (Attachment B). In the past, some permittees have been issued Building Permits for development on the beach without complying with the Long Beach Floodplain Ordinances and without obtaining a Floodplain Development Permit on the basis of unsubstantiated claims that the location involved is not located within the mapped floodplain. These claims have been made without obtaining FEMA Letters of Map Amendment (LOMA) (based on “Elevation Certificates”) as required by FEMA to “establish” that the development will be located above the Base Flood Elevation. (“LOMA” is defined in Ordinance 155.05 as “An amendment to the currently effective FEMA map that establishes that a property is not located in a [Special Flood Hazard Area].”)

A mere claim that a location is above the Base Flood Elevation, even when made by a permittee’s surveyor, does not take the location out of the FEMA designated floodplain. Allowing non-compliance with Chapter 155 (which was adopted to meet the FEMA flood insurance program requirements) without requiring the permittee to first obtain a FEMA map amendment is a serious problem that could endanger the Town’s National Flood Insurance Program status. Such practice should be stopped immediately and Building Permit Applicants claiming a property is above the Base Flood Elevation should be required to provide LOMA letters before a Building Permit is issued. FEMA has a procedure for obtaining a LOMA that is not onerous. Long Beach Ordinance 155.37 requires that Town Floodplain Administrator maintain all such LOMA letters for public inspection.

Further, even properties which have been issued FEMA LOMA letters remain subject to Long Beach floodplain management ordinances if only a portion of the property has been subject to a LOMA determination. Such FEMA LOMAs include the following language:

“Portions of this property, but not the subject of the Determination/Comment document, may remain in the Special Flood Hazard Area. Therefore, any future construction or substantial improvement on the property remains subject to Federal, State/Commonwealth, and local regulations for floodplain management.” [emphasis added]

FEMA LOMA letters also include a special advisory for Great Lakes properties stating:

“... the elevations on the Flood Insurance Rate Map (FORM) may only reflect Stillwater elevation for the lake and may not account for the effects of wind driven waves or wave runup. On-site conditions such as wind speed, wind direction, fetch distance, water depth and the slope of the beach or bluff may result in significant increases to the base flood elevation.” See Attachment C

See Additional Considerations for GREAT LAKES properties stated in the attached sample FEMA LOMA. (Attachment C)

Chapter 155 applies to “flood prone” areas that fall outside the FEMA mapped floodplain, but are “acknowledged by a community as being susceptible to inundation by water from any source.” Long Beach residents know very well that Lake Michigan rose in its lakebed as high as Lake Shore Drive itself during the 1970s-1990s. Notably, the property owners and their general contractor in these recent permit appeals (and prior variance proceedings) argued strenuously that their septic systems on the beach (purported to be located above the “Base Flood Elevation”) are in “imminent peril” of inundation. In light of this, the Building Commission must proceed very carefully before permitting future construction in this acknowledged “flood prone” area – even if a LOMA letter has been provided. Permit applicants for development on the Lake Michigan shore should be required to demonstrate both that the location of any proposed development does not fall within: 1) the FEMA mapped floodplain (by providing a LOMA letter covering the specific location) and 2) areas known in the community to have been subject to a once in 100 year flood (by providing historic evidence).

The General Standards in Ordinance 155.50, which apply to “flood prone” areas as well as mapped floodplains, contain important requirements for “new construction and substantial improvements,” “on-site waste disposal systems,” excavation, filling and grading. These are not just permitting hurdles --they are important protections for private property owners, for Town-owned “Stop” property, for beach held in trust for the public by the State, and for public health. Permittees must demonstrate compliance with these requirements before a Floodplain Development Permit can be issued.

For example, locating septic systems in a floodplain or a “flood prone” area on the Lake Michigan beach, where residents swim and where we get our drinking water, is clearly a threat to public health and safety. Ordinance 155.50 (H) recognizes this and requires that “On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during flooding.” The Building Commission should immediately begin enforcing this ordinance and stop the past practice of approving Building Permits for development predicated on septic systems being located on the Lake Michigan beach.

The General Standards in Section 155.50 are also designed to protect the beach from erosion – a situation of great concern to the Long Beach community at this time. Application of the General Standards must be interpreted in light of the Statement of Purpose in Ordinance 155.03, which includes:

“(A) Restrict or prohibit uses which are dangerous to health, safety, and property due to water or erosion hazards, which result in damaging increases in erosion or in flood heights or velocities.

“(C) Control the alteration of natural floodplains, stream channels, and natural protective barriers which are involved in the accommodation of floodwaters.

“(D) Control filling, grading, dredging, and other development which may increase erosion or flood damage.

AND

“(E) Prevent or regulate alteration of flood barriers which unnaturally divert floodwaters or which may increase flood hazards to other lands.” [emphasis added]

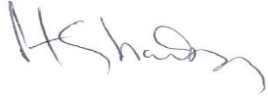
The Chapter 155 General Standards are consistent with the requirements in Ordinance 154.112 and the Town’s stated goal therein “to retain the current dune topography to the maximum extent possible and require developers of zoning lots to plan the development of the zoning lot so as to minimize changes in topography.” Any development in the Lake Michigan AE floodplain and “flood prone” areas must be reviewed to ensure protection of the natural dune topography and the required five determinations in 154.112 (A)-(E) must be expressly made by the Building Commission.

Finally, we note that in addition to obtaining a “floodplain development permit” pursuant to Ordinance 155.36, any development in a flood hazard area requires a special BZA approval pursuant to Ordinance 154.091. It states: “No development shall be permitted, except access stairs and walks necessary to gain access, within the regulated flood way fringe, regulated floodplain area, regulated floodway or the designated flood hazard boundary as depicted on the zoning map unless approved by the Board of Zoning Appeals and only upon presentation of permits and approvals from all state and federal regulatory agencies.” [emphasis added] Any Floodplain Development Permit issued by the Floodplain Administrator must be conditioned on the applicant also obtaining this special BZA approval.

Mr. Wall, LBCA appreciates that you have been Building Commissioner for only a few weeks and that the Building Commission as a whole is new as of January of this year. The above comments are not intended to be a recrimination of you or any current Building Commission member. Rather, it is LBCA’s hope that the newly constituted Building Commission will enforce existing Long Beach Ordinances which prior Building Commissioners and Commission Members apparently failed to understand and failed to enforce. The BZA has now answered any question as to the Building Commission’s duty to enforce the floodplain and topography Ordinances. Accelerating erosion and reckless development on the beach are pressing community issues and the Building Commission has the tools right now to address these issues.

LBCA would appreciate an opportunity to meet with you to discuss general application of these ordinances at your convenience. I can be reached at 312-981-0404.

Thank you,

A handwritten signature in black ink, appearing to read "P. Sharkey". The signature is written in a cursive, flowing style.

Patricia F. Sharkey
Board Member

Cc: Members, Building Commission
Chairman, Board of Zoning Appeals
Julie Paulson, Town Attorney