

# COMMERCIAL OBSERVER

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REAL ESTATE

## NYC Zoning Amendment Increases Building Options in Flood Zones

By Elise Wagner and Adam Taubman

Climate change poses myriad risks to New York City, as exemplified by the effects of Hurricane Sandy in 2012.

The severe rains, winds, and flooding resulted in the damage and destruction of thousands of homes in coastal communities; the temporary displacement of thousands of New Yorkers; and major disruptions to the city's power grid, subway system, and other critical infrastructure. The total cost of the storm to the city, including physical damage and loss of economic activity, has been estimated at \$19 billion.

The city has developed a multi-faceted strategy for promoting climate resiliency, which includes comprehensive planning measures and significant investments in infrastructure. One initiative stands out for reducing flood risks at virtually no cost to the city — while also providing flexibility to developers in flood zones.

The proposed Zoning for Coastal Flood Resiliency (ZCFR) updates and makes permanent existing, temporary regulations that remove zoning barriers to complying with the Building Code's flood-resistant construction standards.

These temporary zoning regulations were adopted on an emergency basis after Hurricane Sandy to facilitate the rebuilding of neighborhoods that were struck hard by that storm, such as Staten Island's eastern shore and Queens' Rockaway Peninsula, and to promote flood-resilient construction throughout the city's flood-hazard areas.

While they have proven successful, however, they have also shown that there is room for improvement, as well as for a need to account for projected increases in sea level throughout the city.

ZCFR modifies and expands the application of existing zoning allowances for buildings that comply with the Building Code's flood-resistant construction standards. Just like the existing regulations, the proposed regulations under ZCFR are technical and complex, but a few significant features illustrate their potential value to property owners and developers.

First, ZCFR maintains and updates zoning allowances for new and existing buildings in the city's floodplain. The proposal simplifies existing regulations that allow maximum building heights for flood-resistant buildings to be measured from several feet above adjoining grade. The result, in some cases, is to allow taller building heights than are permitted under the current regulations. For example, in certain areas, a flood-proofed building may benefit from a height increase of 10 feet — enough, in many cases, to allow an additional floor.

Similarly, ZCFR establishes new floor area exemptions for flood-proofed ground floors. These exemptions are more limited in some respects than the existing exemptions that they replace, but they



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provide greater design flexibility where applicable. For instance, in certain areas, a significant portion of ground-floor commercial space may be excluded from zoning floor area, as long as it satisfies basic design standards relating to ceiling height and glazing.

Second, ZCFR makes zoning allowances under the flood zone regulations available to a significantly larger class of buildings. The existing allowances are available to flood-resistant buildings within the 1 percent annual chance floodplain — also referred to as the “100-year floodplain” or the “flood zone” — since this is the area within which new construction is subject to the Building Code's flood-resistant construction requirements.

Under ZCFR, buildings in the 0.2 percent (500-year) annual chance floodplain may voluntarily utilize most of the same allowances if they proactively comply with these requirements — the rationale being that, with rising flood levels, these buildings will be located within the 1 percent annual chance floodplain as early as 2050.

This is a dramatic change: the 0.2 percent annual chance floodplain comprises coastal areas across all five boroughs and encompasses approximately 44,600 buildings, as shown on a map published by the Department of City Planning.

All signs are that the City Council will approve ZCFR in short order (the City Planning Commission recently did). For owners or developers of properties within the 1 percent or 0.2 percent annual chance floodplain, the regulations are deserving of a closer look.

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