

ARTICLE VII FLOOD HAZARD REGULATIONS

§7.1.1 Statutory Authorization and Effect

In accordance with 10 V.S.A. Chapter 32, and 24 V.S.A. Chapter 117 §4424, §4411 §4414, and 24 VSA Chapter 59, there is hereby established a bylaw for areas at risk of flood damage in the Town of Fairlee, Vermont. Except as additionally described below, all administrative procedures follow municipal procedures under 24 VSA Chapter 117.

§7.1.2 Statement of Purpose

It is the purpose of this bylaw to:

- A. Implement the goals, policies, and recommendations in the current municipal plan;
- B. Avoid and minimize the loss of life and property, the disruption of commerce, the impairment of the tax base, and the extraordinary public expenditures and demands on public services that result from flooding related inundation and erosion;
- C. Ensure that the selection, design, creation, and use of development in hazard areas is reasonably safe and accomplished in a manner that is consistent with public wellbeing, does not impair stream equilibrium, flood plain services, or the stream corridor;
- D. Manage all flood hazard areas designated pursuant to 10 V.S.A. Chapter 32 § 753, the municipal hazard mitigation plan; and make the Town of Fairlee, its citizens, and businesses eligible for federal flood insurance, federal disaster recovery funds, and hazard mitigation funds as may be available.

§7.1.3 Other Provisions

- A. Precedence of Bylaw: the provisions of these flood hazard bylaws shall not in any way impair or remove the necessity of compliance with any other local, state, or federal laws or regulations. Where this flood hazard regulation imposes a greater restriction the provisions here shall take precedence.
- B. Validity and Severability: if any portion of this bylaw is held unconstitutional or invalid by a competent court, the remainder of this bylaw shall not be affected.
- C. Warning of Disclaimer of Liability: this bylaw does not imply that land outside of the areas covered by this bylaw will be free from flood or erosion damages. This regulation shall not create liability on the part of the Town of Fairlee, or any municipal official or employee thereof, for any flood or erosion damages that result from reliance on this regulation, or any administrative decision lawfully made hereunder.

§7.1.4 Lands to Which these Regulations Apply

A. Regulated Flood Hazard Areas: these regulations shall apply to the River Corridors and Special Flood Hazard Areas (hereafter called “hazard areas”) in the Town of Fairlee, Vermont as described below. These hazard areas overlay any other existing zoning districts and the regulations herein are the minimum standards that must be met before meeting the additional standards applicable in the underlying district. These hazard areas include:

1. The River Corridors as published by the Vermont Agency of Natural Resources including the Statewide River Corridors and refinements to that data based on field-based assessments which are hereby adopted by reference. Where River Corridors are not mapped, the standards in VII C shall apply to the area measured as fifty (50) feet from the top of the stream bank or slope.
2. The Special Flood Hazard Area in and on the most current flood insurance studies and maps published by the Department of Homeland Security, Federal Emergency Management Agency, National Flood Insurance Program, as provided by the Secretary of the Agency of Natural Resources pursuant to 10 V.S.A. Chapter 32 § 753, which are hereby adopted by reference and declared to be part of these regulations.

B. Base Flood Elevations and Floodway Limits in Special Flood Hazard Areas: where available, base flood elevations and floodway limits provided by the National Flood Insurance Program and in the Flood Insurance Study and accompanying maps shall be used to administer and enforce these regulations. In Special Flood Hazard Areas where base flood elevations and/or floodway limits *have not* been provided by the National Flood Insurance Program in the Flood Insurance Study and accompanying maps, it is the applicant’s responsibility to develop the necessary data. Where available, the applicant shall use data provided by FEMA, or State, or Federal agencies.

C. Interpretation: The information presented on any maps, or contained in any studies, adopted by reference, is presumed accurate.

1. If uncertainty exists with respect to the boundaries of the Special Flood Hazard Area or the floodway, the location of the boundary shall be determined by the Zoning Administrator (ZA). If the applicant disagrees with the determination made by the ZA, a Letter of Map Amendment from FEMA shall constitute proof.
2. If uncertainty exists with respect to the boundaries of the River Corridor, the location of the boundary shall be determined by the ZA. If the applicant disagrees with the determination made by the ZA, a letter of determination from the Vermont Agency of Natural Resources shall constitute proof.

§7.2 Summary Table: Development Review in Hazard Areas

The hazard areas are not appropriate sites for new structures nor for development that increases the elevation of the base flood or obstructs the ability of streams to establish and maintain geomorphic equilibrium.

#	Activity	Hazard Zone		
		Special Flood Hazard Area	Floodway	River Corridors
	P Permitted C Conditional Use Review X Prohibited A Exempted			
1	New Structures	X	X	X
2	Storage	X	X	X
3	Improvements to Existing Structures	P, C	C	C
4	Small Accessory Structures	P	X	C
5	At Grade Parking	P	C	C
6	Replacement water supply or septic systems	C	C	C
8	Fill as needed to elevate existing structures	C	C	C
9	Fill	X	X	X
12	Grading	C	C	C
13	Road maintenance	A	A	A
14	Road improvements	C	C	C
15	Bridges and culverts	C	C	C
16	Channel management	C	C	C
17	Recreational vehicles	P	P	P
18	Open space, recreation	A	A	A
19	Forestry	A	A	A
20	Agriculture	A	A	A

§7.3 Development Review in Hazard Areas

A. Permit: a permit is required from the Administrative Officer for all development in all areas defined in Section IV. Development that requires conditional use approval, non-conforming use approval, or a variance from the Development Review Board (DRB) under these flood hazard regulations, must have such approvals prior to the issuance of a permit by the ZA. Any development subject to municipal jurisdiction in the designated hazard areas shall meet the criteria in Section VI and VII. Any permit issued will require that all other necessary permits from State or Federal Agencies have been received before work may begin.

B. Permitted Development: for the purposes of review under these regulations, the following development activities in the Special Flood Hazard area where outside of the floodway and outside of the River Corridors, and meeting the Development Standards in Section VII, require only an administrative permit from the ZA:

1. Non-substantial improvements;

2. Accessory structures;
3. Development related to on-site septic or water supply systems;
4. Building utilities;
5. At-grade parking for existing buildings; and,
6. Recreational vehicles.

C. Prohibited Development in Special Flood Hazard Area and River Corridors:

1. New residential or non-residential structures (including the placement of manufactured homes);
2. Storage or junk yards;
3. New fill except as necessary to elevate structures above the base flood elevation;
4. Accessory structures in the floodway;
5. Critical facilities are prohibited in all areas affected by mapped flood hazards; and,
6. All development not exempted, permitted, or conditionally permitted.

D. Conditional Use Review: conditional use review and approval by the DRB, is required prior to the issuance of a permit by the ZA for the following proposed development;

1. Substantial improvement, elevation, relocation, or flood proofing of existing structures;
2. New or replacement storage tanks for existing structures;
3. Improvements to existing structures in the floodway;
4. Grading, excavation; or the creation of a pond;
5. Improvements to existing roads;
6. Bridges, culverts, channel management activities, or public projects which are functionally dependent on stream access or stream crossing;
7. Public utilities;
8. Improvements to existing primary structures in the River Corridors that do not expand the footprint of the existing structure more than 500 square feet;
9. Accessory structures in the River Corridors, of 500 square feet or less, that represent a minimal investment
10. Building utilities in the River Corridors; and,
11. At-grade parking for existing buildings in the River Corridors.

E. Exempted Activities: the following are exempt from regulation under this bylaw;

1. The removal of a building or other structure in whole or in part;
2. Maintenance of existing roads and storm water drainage;
3. Silvicultural (forestry) activities conducted in accordance with the Vermont Department of Forests and Parks Acceptable Management Practices; and,
4. Agricultural activities conducted in accordance with the Vermont Department of Agriculture's Accepted Agricultural Practices (AAP). Prior to the construction of farm structures the farmer must notify the ZA in writing of the proposed activity. The notice must contain a sketch of the proposed structure including setbacks.

F. Variances: variances may be granted in writing by the DRB only in accordance with all the criteria in 24 V.S.A. §4469, §4424 (E), and 44 CFR Section 60.6, after a public hearing noticed as described in Section VIII.

1. A variance for development within the River Corridors may be allowed if, based on a review by VT ANR, it is determined that the proposed development will not obstruct the establishment and maintenance of fluvial geomorphic equilibrium for the watercourse.
2. Any variance issued in the Special Flood Hazard Area will not increase flood heights, and will inform the applicant in writing over the signature of a community official that the issuance of a variance to construct a structure below the base flood elevation increases risk to life and property and will result in increased flood insurance premiums up to amounts as high as \$25 for \$100 of coverage. Such notification shall be maintained with a record of all variance actions.

G. Nonconforming Structures and Uses: the DRB may, after public notice and hearing, approve the repair, relocation, replacement, or enlargement of a nonconforming structure within a flood hazard area provided that;

1. The proposed development is in compliance with all the Development Standards in Section VII of this bylaw;
2. A nonconforming structure that is substantially damaged or destroyed may be reconstructed only in circumstances when the structure cannot be relocated to a less hazardous location on the parcel. The lowest floor of the reconstructed structure must be rebuilt to one foot or more above the base flood elevation, and the structure must otherwise comply with all requirements of the National Flood Insurance Program;
3. Nonconforming structures or uses shall be considered abandoned where such structures or uses are discontinued for more than 12 months; and
4. An individual manufactured home lot in an existing manufactured home park that is vacated shall not be considered a discontinuance or abandonment of nonconformity. Replacement manufactured homes must be placed so as to meet the development standards in this bylaw.

§7.4 Development Standards

The criteria below are the minimum standards for development in the flood hazard areas. Where more than one zone or area is involved, the most restrictive standard shall take precedence.

A. Special Flood Hazard Area

1. All development shall be:
 - a. Reasonably safe from flooding;
 - b. Designed, operated, maintained, modified, and adequately anchored to prevent flotation, collapse, release, or lateral movement of the structure;
 - c. Constructed with materials resistant to flood damage;
 - d. Constructed by methods and practices that minimize flood damage;
 - e. Constructed with electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities that are designed and/or located so as to

- prevent water from entering or accumulating within the components during conditions of flooding;
- f. Adequately drained to reduce exposure to flood hazards;
 - g. Located so as to minimize conflict with changes in channel location over time and the need to intervene with such changes; and,
 - h. Required to locate any fuel storage tanks (as needed to serve an existing building in the Special Flood Hazard Zone) a minimum of one foot above the base flood elevation and be securely anchored to prevent flotation; or storage tanks may be placed underground, if securely anchored as certified by a qualified professional.
2. In Zones AE, AH, and A1 – A30 where base flood elevations and/or floodway limits have not been determined, development shall not be permitted unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated encroachment, will not increase the base flood elevation more than 1.00 foot at any point within the community. The demonstration must be supported by technical data that conforms to standard hydraulic engineering principles and certified by a licensed professional engineer.
 3. Structures to be substantially improved in Zones A, A1-30, AE, and AH shall be located such that the lowest floor is at least one foot above base flood elevation, this must be documented, in as-built condition, with a FEMA Elevation Certificate;
 4. Non-residential structures to be substantially improved shall:
 - a. Meet the standards in A. 3 above; or,
 - b. Have the lowest floor, including basement, together with attendant utility and sanitary facilities be designed so that two feet above the base flood elevation the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy; A permit for flood proofing shall not be issued until a licensed professional engineer or architect has reviewed the structural design, specifications and plans, and has certified that the design and proposed methods of construction are in accordance with accepted standards of practice for meeting the provisions of this subsection.
 5. Fully enclosed areas below grade on all sides (including below grade crawlspaces and basements) are prohibited.
 6. Fully enclosed areas that are above grade, below the lowest floor, below BFE and subject to flooding, shall:
 - a. Be solely used for parking of vehicles, storage, or building access, and such a condition shall clearly be stated on any permits; and,
 - b. Be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Such designs must be certified by a licensed professional engineer or architect, or meet or exceed the following minimum criteria: A minimum of two openings on two walls having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall

be provided. The bottom of all openings shall be no higher than one foot above grade. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

7. Recreational vehicles must be fully licensed and ready for highway use;
8. A small accessory structure of 500 square feet or less that represents a minimal investment need not be elevated to the base flood elevation in this area, provided the structure is placed on the building site so as to offer the minimum resistance to the flow of floodwaters and shall meet the criteria in 6 (above).
9. Water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the systems.
10. Sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters.
11. On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.
12. The flood carrying and sediment transport capacity within the altered or relocated portion of any watercourse shall be maintained, and any alteration or relocation shall not result in any decrease of stream stability;
13. Bridges and culverts, which by their nature must be placed in or over the stream, must have a stream alteration permit from the Agency of Natural Resources where applicable.
- 14 Subdivisions and Planned Unit Developments must be accessible by dry land access outside the special flood hazard area.
15. Existing buildings, including manufactured homes, to be substantially improved in Zone AO shall have the lowest floor, including basement, elevated above the highest adjacent grade, at least as high as the depth number specified on the community's FIRM, or at least two feet if no depth number is specified.

B. Floodway Areas

1. Encroachments or development above grade and less than one foot above the base flood elevation, are prohibited unless hydrologic and hydraulic analyses are performed in accordance with standard engineering practice, by a licensed professional engineer, certifying that the proposed development will:
 - a) Not result in any increase in flood levels (0.00 feet) during the occurrence of the base flood;
 - b) Not increase any risk to surrounding properties, facilities, or structures from erosion or flooding.

2. Public utilities may be placed underground, and the analyses may be waived, where a licensed professional engineer certifies that there will be no change in grade and the utilities will be adequately protected from scour.

C. River Corridors

1. Improvements to existing structures, and any associated fill as needed to comply with elevation requirements in the Special Flood Hazard Area shall not decrease the distance between the existing primary building and the top of bank;
2. Accessory structures may be located within 50 feet of the existing primary building provided that the location does not decrease the distance between the existing primary structure and the top of bank.
3. Development shall not increase the susceptibility of that or other properties to fluvial erosion damage;
4. Development shall not increase the potential of materials being swept onto other lands or into the stream and causing damage to other properties from fluvial erosion;
5. Development shall not cause an undue burden on public services and facilities including roads, bridges, culverts, and emergency service providers during and after fluvial erosion events.
6. Bridge and culvert projects must have a Stream Alteration Permit; and
7. Channel management activities must be authorized by the Agency of Natural Resources.

§7.5 Administration

A. Application Submission Requirements: applications for development shall include;

1. Where applicable, a site plan that depicts the proposed development, all water bodies, Special Flood Hazard Areas, floodways, River Corridors, the shortest horizontal distance from the proposed development to the top of bank of any stream, any existing and proposed drainage, any proposed fill, and pre and post development grades, and the elevation of the proposed lowest floor, as referenced to the same vertical datum as the elevation on the current Flood Insurance Rate Maps;
2. A Vermont Agency of Natural Resources Project Review Sheet for the proposal. The Project Review Sheet shall identify all State and Federal agencies from which permit approval is required for the proposal, and shall be filed as a required attachment to the municipal permit application. The identified permits, or letters indicating that such permits are not required, shall be submitted to the ZA and attached to the permit before work can begin;

B. Referrals:

1. Upon receipt of a complete application for a substantial improvement or new construction the ZA shall submit a copy of the application and supporting information to the State National Flood Insurance Program (NFIP) Coordinator at the Vermont Agency of Natural Resources, in accordance with 24 V.S.A. § 4424. A permit may be issued only following receipt of comments from the Agency, or the expiration of 30 days from the date the application was mailed to the Agency, whichever is sooner.

2. If the applicant is seeking a permit for the alteration or relocation of a watercourse, copies of the application shall also be submitted to the adjacent communities, the Stream Alteration Engineer at the Vermont Agency of Natural Resources, and the Army Corps of Engineers. Copies of such notice shall be provided to the State National Flood Insurance Program (NFIP) Coordinator at the Vermont Agency of Natural Resources, Department of Environmental Conservation. A permit may be issued only following receipt of comments from the Vermont Agency of Natural Resources, or the expiration of 30 days from the date the application was mailed to the Vermont Agency of Natural Resources, whichever is sooner. The Board should consider comments from the NFIP Coordinator at ANR.

C. Decisions: the DRB shall consider comments from the NFIP Coordinator at ANR. The DRB may recess the proceedings on any application pending submission of additional information.

D. Records: the Administrative Officer shall properly file and maintain a record of:

1. All permits issued in areas covered by this bylaw;
2. An Elevation Certificate with the as-built elevation (consistent with the datum of the elevation on the current Flood Insurance Rate Maps for the community) of the lowest floor, including basement, of all new, substantially improved, or flood proofed buildings (not including accessory buildings) in the Special Flood Hazard Area;
3. All flood proofing and other certifications required under this regulation; and,
4. All decisions of the DRB (including variances and violations) and all supporting findings of fact, conclusions and conditions.

§7.6 Certificate of Compliance

In accordance with Chapter 117 §4449, it shall be unlawful to use or occupy, or permit the use or occupancy of any land or structure, or part thereof, created, erected, changed, converted, or wholly or partly altered or enlarged in its use or structure within Special Flood Hazard Area or River Corridors until a certificate of compliance is issued therefore by the Administrative Officer, stating that the proposed use of the structure or land conforms to the requirements of these bylaws. A certificate of compliance is not required for structures that were built in compliance with the bylaws at the time of construction and have not been improved since the adoption of this bylaw. Within 14 days of the receipt of the application for a certificate of compliance, the ZA shall inspect the premises to ensure that all permits identified on the Project Review Sheet have been acquired and all that all work has been completed in conformance with the zoning permit and associated approvals. If the ZA fails to grant or deny the certificate of compliance within 14 days of the submission of the application, the certificate shall be deemed issued on the 15th day. If a Certificate of Compliance cannot be issued, notice will be sent to the owner and copied to the lender.

§7.7 Enforcement and Penalties

A. This bylaw shall be enforced under the municipal zoning bylaw in accordance with 24 VSA Chapter 117 §4451, §4452 and 24 VSA Chapter 59 §1974a, A copy of the notice of violation will be mailed the State NFIP Coordinator.

B. If any appeals have been resolved, but the violation remains, the ZA shall submit a declaration to the Administrator of the National Flood Insurance Program requesting a denial of flood insurance to the property pursuant to §1316 of the National Flood Insurance Act of 1968, as amended.

C. Violations of the Accepted Agricultural Practices shall be enforced under this Section as violations of this bylaw. Such violations shall also be immediately reported to the Secretary of Agriculture for enforcement under 6 V.S.A. §4812.