

Town of Derry Zoning Ordinance

ARTICLE VII FLOODPLAIN DEVELOPMENT DISTRICT

**Section 165-50 Applicability**

The following regulations in this section shall apply to all lands designated as special flood hazard areas by the Federal Emergency Management Agency (FEMA) in its Flood Insurance Study of the County of Rockingham, NH dated May 17, 2005 or as amended, together with the associated Flood Insurance Rate Maps (FIRM) dated May 17, 2005 or as amended, which are declared to be a part of this chapter and are hereby incorporated by reference. (Effective 5/17/05)

**Section 165-51 Definitions**

For purposes of this article, certain words or terms shall be interpreted as defined herein. Where the definition of a word or term contained in this section conflicts with a similar word or term as defined in Article II of this chapter, the definition contained in this section shall apply only to these floodplain development provisions.

~~AREA OF SHALLOW FLOODING — A designated AO or AH zone on the Flood Insurance Rate Map (FIRM) with a one percent or greater annual possibility of flooding to an average depth of one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable, and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.~~

AREA OF SPECIAL FLOOD HAZARD — The floodplain within the Town of Derry subject to a one percent or greater possibility of flooding in any given year. The area ~~may be designated as Zone A on the FHBM, and~~ is designated on the FIRM as Zones A, ~~AO, AH, A1-30, AE, or A99~~ and AE.

BASE FLOOD — The flood having a one percent possibility of being equaled or exceeded in any given year.

BASEMENT — ~~Any~~ area of a building having its floor subgrade (below ground level) on all sides.

~~BREAKAWAY WALL — 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.~~

BUILDING — See “structure.”

DEVELOPMENT — Any man-made change to improved or unimproved real estate including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials, as defined by FEMA.

FEMA — The Federal Emergency Management Agency.

~~FLOOD BOUNDARY AND FLOODWAY MAP — An official map of the Town of Derry, on which FEMA has delineated the "Regulatory Floodway." This map should not be used to determine the correct flood hazard zone or base flood elevation. The Flood Insurance Rate Map (FIRM) will be used to make determinations of flood hazard zones and base flood elevations.~~

FLOOD ELEVATION INSURANCE STUDY — An examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations, or an examination and determination of mudslide or flood-related erosion hazards.

FLOOD INSURANCE RATE MAP (FIRM) — An official map incorporated with this chapter, on which FEMA has delineated both the special flood hazard areas and the risk premium zones applicable to the Town of Derry.

~~FLOOD INSURANCE STUDY — See “flood elevation study.”~~

FLOOD OR FLOODING — A general and temporary condition of partial or complete inundation of normally dry land areas from:

- a. The overflow of inland or tidal waters, and/or
- b. The unusual and rapid accumulation or runoff of surface waters from any source.

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FLOOD PLAIN or FLOOD-PRONE AREA — Any land area susceptible to being inundated by water from any source (see definition of “flooding”).

FLOOD PROOFING — Any combination of structural and non-structural additions, changes or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitation facilities, structures and their contents.

FLOODWAY — See “regulatory floodway.”

FUNCTIONALLY DEPENDENT USE — A use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking and port facilities that are necessary for the loading and unloading of cargo or passengers, and ship-building and ship-repair facilities, but does not include long-term storage or related manufacturing facilities.

HIGHEST ADJACENT GRADE — The highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

HISTORIC STRUCTURE — Any structure that is:

- A. 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;
- B. 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;
- C. 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

- D. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
1. By an approved state program as determined by the Secretary of the Interior, or
  2. Directly by the Secretary of the Interior in states without approved programs.

**LOWEST FLOOR** — The lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access, or 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 violation of the applicable nonelevation design requirements of this chapter.

**MANUFACTURED HOME** — A structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. For floodplain management purposes, the term "manufactured home" includes park trailers, travel trailers, and other similar vehicles placed on a site for greater than 180 days. This includes manufactured homes listed in a manufactured home park or subdivision.

MANUFACTURED HOME PARK OR SUBDIVISION – A parcel (or contiguous parcels) off and divided into two or more manufactured home lots for rent or sale.

**MEAN SEA LEVEL** — The National Geodetic Vertical Datum (NGVD) of 1929, or other datum, to which base flood elevations shown on a community's Flood Insurance Rate Map are referenced.

NEW CONSTRUCTION – For the purposes of determining insurance rates, structures for which the “start of construction” commenced on or after the effective date of an initial FIRM or after December 31, 1974, whichever is later, and includes any subsequent improvements to such structures. For floodplain management purposes, *new construction* means structures for which the *start of construction* commenced on or after the effective date of a floodplain management regulation adopted by a community and includes any subsequent improvements to such structures.

**ONE-HUNDRED-YEAR FLOOD** — See “base flood.”

RECREATIONAL VEHICLE – Defined as:

- a. Built on a single chassis;
- b. 400 square feet or less when measured at the largest horizontal projection;
- c. Designed to be self-propelled or permanently towable by a light duty truck; and

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d. Designed primarily **not** for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel or seasonal use.

REGULATORY FLOODWAY — The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height. ~~These areas are designated as floodways on the Flood Boundary and Floodway Maps.~~

SPECIAL FLOOD HAZARD AREA — ~~An area having special flood, mudslide, or flood-related erosion hazards and shown on an FHBM or FIRM as Zone A, AO, A1-30, AE, A99, AH, M or E.~~ (See “area of special flood hazard.”)

START OF CONSTRUCTION — Includes substantial improvements, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the state 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 the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or part of the main structure.

STRUCTURE — For floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank that is principally above ground, as well as a manufactured home.

SUBSTANTIAL DAMAGE — 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% of the market value of the structure before the damage occurred.

SUBSTANTIAL IMPROVEMENT — Any combination of repairs, reconstruction, alteration or improvements to a structure in which the cumulative cost equals or exceeds 50% percent of the market value of the structure.

- A. The market value of the structure should be:
1. The appraised value of the structure prior to the start of the initial repair or improvement, or

2. In the case of damage, the value of the structure prior to the damage occurring.

B. For the purpose of this definition, "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 have incurred substantial damage, regardless of actual repair work performed. The term does not, however, include any project for improvement of a structure required to comply with existing health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions, or any alteration of an historic structure, provided that the alteration will not preclude the structure's continued designation as an historic structure.

VIOLATION – The failure of a structure or other development to be fully compliant with the community's flood plain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required under Section 165-55, Section 165-58(B)(2), or Section 165-57(C)(D) of this ordinance is presumed to be in violation until such time as that documentation is provided.

WATER SURFACE ELEVATION — The height, in relation to the National Geodetic Vertical Datum (NGVD) of 1929 (or other datum, where specified), of floods of various magnitudes and frequencies in the floodplains.

### ***Section 165-52 Permit Required***

All proposed development in any special flood hazard areas shall require a permit.

### ***Section 165-53 New Construction or Substantial Improvements***

The Building Inspector shall review all building permit applications for new construction or substantial improvements to determine whether proposed building sites will be reasonably safe from flooding. If a proposed building site is located in a special flood hazard area, all new construction and substantial improvements shall be:

- A. Designed (or modified) and adequately anchored to prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;

- B. Constructed with materials resistant to flood damage;
- C. Constructed by methods and practices that minimize flood damage; and
- D. 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.

### ***Section 165-54 Water and Sewer Systems***

Where new and replacement water and sewer systems (including on-site systems) are proposed in a special flood hazard area, the applicant shall provide the Building Inspector with assurance that these systems will be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters, and on-site waste disposal systems will be located to avoid impairment to them or contamination from them during periods of flooding.

### ***Section 165-55 Certification***

- A. For all new or substantially improved structures located in Zones A, ~~A1-30, AE, AO or AHAE~~, the applicant shall furnish the following information to the Building Inspector:
  - 1. The as-built elevation (in relation to NGVD) of the lowest floor (including basement) and include whether or not such structures contain a basement.
  - 2. If the structure has been floodproofed, the asbuilt elevation (in relation to NGVD) to which the structure was floodproofed.
  - 3. Any certification of floodproofing.
- B. The Building Inspector shall maintain for public inspection, and shall furnish such information upon request.

### ***Section 165-56 Permits From Federal or State Agencies***

The Building Inspector shall not grant a building permit until the applicant certifies that all necessary permits have been received from those governmental agencies from which approval is required by federal or state law, including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. Section 1334.

### **Section 165-57 Alteration or Relocation of a Watercourse**

A. In riverine situations, prior to the alteration or relocation of a watercourse, the applicant for such authorization shall notify the Wetlands Board of the New Hampshire Department of Environmental Services and submit copies of such notification to the Building Inspector, in addition to the copies required by RSA 482-A:3. Further, the applicant shall be required to submit copies of said notification to those adjacent communities as determined by the Building Inspector, including notice of all scheduled hearings before the Wetlands Board.

B. The applicant shall submit, to the Building Inspector, certification provided by a registered professional engineer assuring that the flood-carrying capacity of an altered or relocated watercourse can and will be maintained.

C. Along watercourses that have a designated Regulatory Floodway, no encroachments, including fill, new construction, substantial improvements, or other development, are allowed within the floodway that would result in any increase in flood levels within the community during the base flood discharge. ~~In Zone A, the Building Inspector shall obtain, review, and reasonably utilize any floodway data available from federal, state or other sources as criteria for requiring that development meet the floodway requirements of this section.~~

D. Along watercourses that have not had a Regulatory Floodway designated, no new construction, substantial improvements, or other development (including fill) shall be permitted within ~~Zones A1-30 and Zone~~ AE on the FIRM, unless it is demonstrated by the applicant that the cumulative effect of the proposed development, when combined with all existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community.

E. The Building Inspector shall obtain, review, and reasonably utilize any floodway data available from Federal, State, or other sources as criteria for requiring that all development located in Zone A meet the following floodway requirement:

“No encroachments, including fill, new construction, substantial improvements, and other development are allowed within the floodway that would result in any increase in flood levels within the community during the base flood discharge.”

**Section 165-58 Determination of Flood Elevation**

A. In special flood hazard areas, the Building Inspector shall determine the 100-year flood elevation in the following order to precedence according to the data available:

1. In ~~Zones A1-30, AH, and Zone~~ Zone AE, refer to the elevation data provided in the community's Flood Insurance Study and accompanying FIRM ~~or FHBM~~.
2. In ~~unnumbered A zones~~ Zone A, the Building Inspector shall obtain, review and reasonably utilize any one-hundred-year flood elevation data available from federal, state, or other sources, including data submitted for development proposals submitted to the community, e.g., subdivisions, site approvals, etc.
3. ~~In Zone AO, the flood elevation is determined by adding the elevation of the highest adjacent grade to the depth number specified on the FIRM, or if no depth number is specified on the FIRM, at least 2 feet.~~

B. The Building Inspector's 100-year flood elevation determination will be used as criteria for requiring, in Zones A, ~~A1-30, AE, AH, and AO~~ AE, that:

1. All new construction and substantial improvements of residential structures have the lowest floor (including basement) elevated to or above the 100-year flood elevation;
2. All new construction and substantial improvements of nonresidential structures have the lowest floor (including basement) elevated to or above the 100-year flood level; or together with attendant utility and sanitary facilities, shall:
  - a. Be floodproofed so that below the 100-year flood elevation the structure is watertight, with walls substantially impermeable to the passage of water;
  - b. Have structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy; and

- c. Be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting the provisions of this section.
3. All manufactured homes to be placed or substantially improved within special flood hazard areas shall be elevated on a permanent foundation such that the lowest floor of the manufactured home is at or above the base flood level; and be securely anchored to resist flotation, collapse or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable state and local anchoring requirements for resisting wind forces.
4. Recreation Vehicles placed on sites within zones ~~A1-30, AH, A~~ and AE shall either (Effective 1/3/95)
  - a. Be on the site for fewer than one hundred and 180 consecutive days;
  - b. Be fully licensed and ready for highway use; or
  - c. Meet all standards of Section 60.3.b.1 of the National Flood Insurance Program regulations and the elevation and anchoring requirements for manufactured homes in paragraph c.6 of Section 60.3.
5. For all new construction and substantial improvements, fully enclosed areas below the lowest floor that are subject to flooding are permitted, providing the enclosed areas meet the following requirements:
  - a. The enclosed area is unfinished or flood resistant, usable solely for parking of vehicles, building access, or storage;
  - b. The area is not a basement; and
  - c. The area shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwater. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or must meet or exceed the following minimum criteria:

- i. A minimum of two openings 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.
- ii. The bottom of all openings shall be no higher than one foot above grade.
- iii. Openings may be equipped with screens, louvers, or other coverings or devices, provided that they permit the automatic entry and exit of floodwater.

~~6. Proposed structures to be located on slopes in special flood hazard areas, Zones AH and AO, shall include adequate drainage paths to guide flood waters around and away from the proposed structures.~~

### **Section 165-59 Variances and Appeals**

- A. Any order, requirement, decision or determination of the Building Inspector made under these floodplain development regulations may be appealed to the Zoning Board of Adjustment as set forth in RSA 676:5.
- B. If the applicant, upon appeal, requests a variance as authorized by RSA 674:33,I(b), in determining whether or not any variance will be contrary to the spirit of these regulations, the Board of Adjustment shall consider the following:
  - 1 That the variance will not result in increased flood heights, additional threats to public safety, or extraordinary public expense;
  - 2 That, if the requested variance is for activity within a designated Regulatory Floodway, no increase in flood levels during the base flood discharge will result; and
  - 3 That the variance is the minimum necessary, considering the flood hazard, to afford relief.

C. The Zoning Board of Adjustment shall notify the applicant in writing that:

- a. The issuance of a variance to construct below the base flood level will result in increased premium rates for flood insurance up to amounts as high as \$25 for \$100 of insurance coverage; and

b. Such construction below the base flood level increases risks to life and property.

Such notification shall be maintained with a record of all variance actions.

GD. The community shall:

1. maintain a record of all variance actions, including their justification for their issuance; and
2. report such variances issued in its annual or biennial report submitted to FEMA's Federal Insurance Administrator.

## ARTICLE IX CONSERVATION CORRIDOR OVERLAY DISTRICT

This area, to be known as the "Conservation Corridor," shall be all lands in the 100-year flood plain determined by the Federal Insurance Administration's Flood Insurance Rate Maps (FIRM) ~~and the Flood Boundary and Flood Insurance Study of the County of~~ Rockingham County, NH, dated -May 17, 2005 or as amended, on file with the Town Clerk, Planning Board and Building Inspector. These maps, as well as the accompanying "Flood Insurance Study of ~~the County of~~ Rockingham County, NH, are incorporated herein by reference.

### ***Section 165-70 Purpose; Conflicting Provisions***

The purpose of this article is to regulate uses in important wetland and watershed areas. The objective is to prevent the destruction of watershed areas and wetlands which provide flood protection, recharge of ground water supply, and augmentation of stream flow, and for the protection of the community against the costs that may be incurred when unsuitable development occurs in swamps, marshes, along watercourses, or in areas subject to floods. In event of conflict between the requirements of this Article and the permitted uses within a zoning district, the requirements of this Article shall take precedence.

### ***Section 165-71 Location***

This area, to be known as the "Conservation Corridor," shall be all lands in the 100-year flood plain determined by the Federal Insurance Administration's Flood Insurance Rate Maps (FIRM) ~~and the Flood Boundary and Floodway Maps~~, dated May 17, 2005, on file with the Town Clerk, Planning Board and Building Inspector. These maps, as well as the accompanying "Flood

Insurance Study of ~~the Town of Derry~~Rockingham County, NH," are incorporated herein by reference.

### ***Section 165-72 Permitted uses***

The following uses are permitted within this district:

Agriculture.

Forestry.

Wildlife management.

Outdoor recreation activities, providing that they do not alter the existing topography.

Construction and maintenance of public water supply systems.

Construction and maintenance of public sewer and utility systems.

Accessory uses and structures usually associated with these permitted uses, provided that such accessory uses do not affect the existing topography, and that no accessory building is larger than 500 square feet.

### ***Section 165-73 Prohibited Uses***

The following uses are prohibited in this district:

All new construction or placement of new buildings, except as provided in Section 165-72.

New subsurface waste treatment systems

Piggeries

Manure stockpiling

Mink farms

Amusement parks

Race tracks

Outdoor movie theaters

Junk yards

Any use that, in the opinion of the Building Inspector, is contrary to the intent or purposes of this article

### **Section 165-74 Special Exceptions**

A special exception for the expansion of an existing use may be granted by the Zoning Board of Adjustment provided that:

- A. It is shown, by the applicant, that such expansion will not be contrary to the purposes set forth in this article; and
- B. Written recommendations of the Conservation Commission are considered by the Zoning Board of Adjustment.

## **Land Development Control Regulations**

### **Article V Design and Construction Standards**

#### **Section 170-32 Special Flood Hazard Areas**

- A. All subdivision proposals which contain lands designated as Special Flood Hazard Area by the Federal Emergency Management Agency (FEMA) in its "Flood Insurance Study for ~~the Town of Derry~~ Rockingham County, NH" together with the associated Flood Insurance Rate Maps (FIRM) ~~and the Flood Boundary and Floodway Maps~~ dated May 17, 2005, shall meet the requirements of this section.
- B. The Planning Board shall review the proposed development to assure that all necessary permits have been received from those governmental agencies from which approval is required by Federal or State law, including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334.
- C. The Planning Board shall require that all subdivision proposals include within such proposals base flood elevation data, if applicable.

D. Sufficient evidence (construction, drawings, grading and land treatment plans) shall be submitted so as to allow a determination that:

1. All such proposals are consistent with the need to minimize flood hazards;
2. All public utilities and facilities, such as sewer, gas, electrical, and water systems are located and constructed to minimize or eliminate flood damage; and
3. Adequate drainage is provided so as to reduce exposure to flood hazards.

E. In order to obtain the approval of the Planning Board, the applicant must affirmatively demonstrate to the Board, by a preponderance of the credible evidence presented at a public meeting or meetings, that all the requirements of this section have been met and that the procedures set forth in these regulations have been followed.

F. No development which requires approval by the Board will be permitted in the Conservation Corridor Overlay District (as defined in Chapter 165, Zoning), unless the applicant has applied for and received a special exception under the provisions of Article IX, Section 165-74 of Chapter 165, Zoning; and has demonstrated that there will be no impairment of the absorptive capacity of the wetlands within the Conservation Corridor Overlay District, as defined by Chapter 165, Zoning, that flood water elevations will not be increased, and that there will be no harm caused to wildlife.

## **Article XI Design and Construction Standards**

### **Section 170-68 Special Flood Hazard Areas**

A. All development proposals which contain lands designated as Special Flood Hazard Area by the Federal Emergency Management Agency (FEMA) in its "Flood Insurance Study for ~~the Town of Derry~~Rockingham County, NH" together with the associated Flood Insurance Rate Maps (FIRM) ~~and the Flood Boundary and Floodway Maps~~ dated May 17, 2005, shall meet the requirements of this Section.

B. The Planning Board shall review the proposed development to assure that all necessary permits have been received from those governmental agencies from which approval is required by Federal or State law, including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334.

C. The Planning Board shall require that the development proposals include within such proposals base flood elevation data, if applicable.

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- D. Sufficient evidence (construction, drawings, grading and land treatment plans) shall be submitted so as to allow a determination that:
1. All such proposals are consistent with the need to minimize flood hazards;
  2. All public utilities and facilities, such as sewer, gas, electrical, and water systems are located and constructed to minimize or eliminate flood damage; and
  3. Adequate drainage is provided so as to reduce exposure to flood hazards.
- E. In order to obtain the approval of the Planning Board, the applicant must affirmatively demonstrate to the Board, by a preponderance of the credible evidence presented at a public meeting or meetings, that all the requirements of this section have been met and that the procedures set forth in these regulations have been followed.
- F. No development which requires approval by the Board will be permitted in the Conservation Corridor Overlay District (as defined in Chapter 165, Zoning) unless applicant has applied for and received a special exception under the provisions of Article IX, Section 165-74 of Chapter 165, Zoning, ; and has demonstrated that there will be no impairment of the absorptive, capacity of the wetlands within the Conservation Corridor Overlay District as defined by Chapter 165, Zoning, that flood water elevations will not be increased, and that there will be no harm caused to wildlife.