

Purpose: To revise the language of the ordinance by deleting non-applicable information, correcting outdated references and adding missing information to make it more understandable and consistent with state and federal regulations. Please note these numerous revisions were recommended by the NH Office of Energy and Planning, and are not very substantive in nature.

5.6 Flood Plain Conservation District (Zone FP)

5.6.1 Authority

This Ordinance, adopted pursuant to the authority of RSA 674:16 [and 674:21], shall be known as the Town of Chester Floodplain Management Ordinance. The regulations in this Ordinance shall overlay and supplement the regulations in the Town of Chester Zoning Ordinance, and shall be considered part of the Zoning Ordinance for purposes of administration and appeals under state law. If any provision of this Ordinance differs or appears to conflict with any provision of the Zoning Ordinance or other Ordinance or regulation, the provision imposing the greater restriction or more stringent standard shall be controlling.

5.6.2 District Boundaries

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

5.6.3 Permitted Uses

5.6.3.1 Permitted uses in the Flood Plain District are as follows:

- a) Any use otherwise permitted by the Zoning Ordinance and state and federal laws that does not involve new development except as provided in Subsection 5.6.3.2, or does not alter the surface configuration of the land by the addition of fill or by dredging as a common treatment association with a permitted use;
- b) Agricultural use including grazing, hay production, truck gardening, and silage production provided that such use is shown not to cause significant increases in surface or ground water contamination by pesticides, fertilizers or other toxic or hazardous substances, and that such use will not cause or contribute to soil erosion;
- c) Forest and tree farming including the construction of access roads for said purpose;
- d) Wild life habitat development and management;

- e) Recreational uses consistent with the purpose and intent of these provisions as defined in Subsection 5.6.1 provided said uses do not result in increasing the velocity of flood water run-off;
- f) Conservation areas and nature trails;
- g) Water impoundment and construction of well water supplies;
- h) Drainage ways to include streams, creeks or other paths of normal run-off water and common agricultural land drainage.

5.6.3.2 The following uses are allowed by special use permit from the Planning Board:

- a) The construction of fences, foot bridges, catwalks, wharves, and boathouses not intended or used for occupancy or storage of hazardous materials and which are normally associated with use in or near water provided that:
 - 1) Said development is constructed on posts or pilings so as to permit the unobstructed flow of water;
 - 2) The natural contour of the Flood Plain is preserved; and
 - 3) The Planning Board has reviewed and approved the proposed construction by granting a special use permit.

5.6.4 Conditional Uses

A conditional use permit may be granted by the Planning Board for the construction of roads and other access ways and for pipelines, power lines and other transmission lines provided that all of the following conditions are found to exist:

- 5.6.4.1 The proposed construction is essential to the productive use of land not within the Flood Plain Conservation District.
- 5.6.4.2 Design and construction methods will be such as to minimize detrimental impact upon the Flood Plain and will include restoration of the site as nearly as possible to its original gradient condition.
- 5.6.4.3 No alternative route which does not cross a Flood Plain or has less detrimental impact on the Flood Plain is feasible.
- 5.6.4.4 Economic advantage alone is not a reason for the proposed construction.

- 5.6.4.5 Prior to the granting of conditional use permit use under this subsection, the applicant may be required to submit a performance security to the Planning Board in a form acceptable to the Board. The security shall be submitted in a form and amount with surety and conditions satisfactory to the Planning Board to ensure that the construction has been carried out in accordance with the approved design. The security shall be submitted and approved prior to the issuance of any permit authorizing construction.
- 5.6.4.6 The Planning Board with the concurrence of the Conservation Commission may require the applicant to submit an environmental impact assessment when necessary to evaluate an application made under this part. The cost of this assessment shall be borne by the applicant. The Planning Board may also assess the applicant reasonable fees to cover the cost of other special investigative studies and for the review of documents required by particular applications.

5.6.5 National Flood Insurance Program

5.6.5.1 Purpose - Certain areas of the Town of Chester, New Hampshire are subject to periodic flooding, causing serious damages to properties within these areas. Relief is available in the form of flood insurance as authorized by the National Flood Insurance Act of 1968. Therefore, the Town of Chester, New Hampshire has chosen to become a participating community in the National Flood Insurance Program, and agrees to comply with the requirements of the National Flood Insurance Act of 1968 (P.L. 90-488, as amended) as detailed in this Floodplain Management Ordinance. The Town does not wish to permit new development in the Flood Plain District.

5.6.5.2 Applicability to Certain Existing Structures - Buildings and other structures that are valid nonconforming uses under Section 4.2 may be repaired, altered, or reconstructed to the extent permitted under Section 4.2, but only in compliance with the criteria in the following subsections. Nothing in the following subsections is intended to permit any construction or other development unless permitted under Section 4.2 and other applicable provisions of this ordinance.

5.6.5.3 Definitions – The following definitions shall apply only to this Floodplain Management Ordinance, and shall not be affected by, the provisions of any other Ordinance of the Town of Chester.

5.6.5.3.1 Base Flood means the flood having a one percent chance of being equaled or exceeded in any given year.

5.6.5.3.2 Base Flood Elevation means the elevation to which floodwater is expected to rise during the base flood.

5.6.5.3.3 Basement - Means any area of a building having its floor sub-grade on all sides.

5.6.5.3.4 Development means 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 drill operations or storage of equipment or materials.

5.6.5.3.5 FEMA - Means the Federal Emergency Management Agency.

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

- 1) The overflow of inland or tidal waters.
- 2) The unusual and rapid accumulation or runoff of surface waters from any source.

5.6.5.3.7 Flood Insurance Rate Map (FIRM) means the official map incorporated with this ordinance, on which FEMA has delineated both the special flood hazard areas and the risk premium zones applicable to the Town of Chester.

5.6.5.3.8 Flood Plain or flood prone area means any land area susceptible to being inundated by water from any source (see definition of "flood").

5.6.5.3.9 Flood proofing means any combination of structural and nonstructural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

5.6.5.3.10 Highest Adjacent Grade - Means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

5.6.5.3.11 Historic Structure - Means 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:

- i) By an approved state program as determined by the Secretary of the Interior, or
- ii) Directly by the Secretary of the Interior in states without approved programs.

5.6.5.3.12 Lowest Floor - Means 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 an enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this Ordinance.

5.6.5.3.13 Mean Sea Level - Means the National Geodetic Vertical Datum ("NGVD") of 1929, North American Vertical Datum ("NAVD") of 1988 or other Datum to which base flood elevations shown on a community's Flood Insurance Rate Map are referenced.

5.6.5.3.14 Manufactured home 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. It does not include recreational vehicles or travel trailers. The term includes but is not limited to, the definition of "manufactured home" as set forth in regulations governing the Mobile Home Safety and Construction Standards Program (24 CFR 3282.7(a)). This includes manufactured homes located in a manufactured home park or subdivision.

5.6.5.3.15 Manufactured Home Park or Subdivision means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or for sale.

5.6.5.3.15 New Construction means, 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.

5.6.5.3.16 Persons include any individuals or group of individuals, corporations, partnership, association or any other entity.

5.6.5.3.17 Recreational Vehicle - Is 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
- d) Designed primarily **not** for use as a permanent dwelling, but as temporary living quarters for recreational, camping, travel, or seasonal use.

5.6.5.3.18 Regulatory Floodway - [means 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 increasing the water surface elevation. These areas are designated as floodways on the Flood Insurance Rate Map.]

5.6.5.3.20 Riverine means relating to, formed by or resembling a river (including tributaries, stream, brook, etc.).

5.6.5.3.21 Special Flood Hazard Area (SFHA) - is the land in the floodplain within the Town of Chester subject to a one-percent or greater possibility of flooding in any given year. The area is designated as Zone A on the FIRM.

5.6.5.3.22 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 site, such as the pouring of slab or footings, the installation of piles, the 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 the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or part of the main structure.

5.6.5.3.23 Structure means, for flood plain 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.

5.6.5.3.24 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 market value of the structure before the damage occurred.

5.6.5.3.25 Substantial Improvement – Means any combination of repairs, reconstruction, alterations, or improvements to a structure in

which the cumulative cost equals or exceeds 50 percent of the market value of the structure. The market value of the structure should equal:

a) The appraised value prior to the start of the initial repair or improvement, or

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

i) For the purposes 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 that 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 a "historic structure", provided that the alteration will not preclude the structure's continued designation as a "historic structure".

5.6.5.3.26 Variance means a grant of relief by a community from the terms of a flood plain management regulation.

5.6.5.3.27 Violation means the failure of a structure or other development to be fully compliant with the community's floodplain management regulations.

5.6.5.4 Permit Requirement - No person shall erect, construct, enlarge, alter, repair, improve, move or demolish any building or structure without first obtaining a separate permit for each building or structure from the Building Inspector.

All proposed development in special flood hazard areas shall require a permit. No 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 shall be commenced until a separate permit has been obtained from the Building Inspector for each change.

No manufactured home shall be placed on improved or unimproved real estate without first obtaining a separate permit for each manufactured home from the Building Inspector.

5.6.5.5 Application - To obtain a permit, the applicant shall first file a permit

application on a form furnished for that purpose. The form must be completed and submitted to the Building Inspector with a fee of (see "Town of Chester Building Code Permit Fee Schedule") before the issuance of a permit will be considered.

5.6.5.6 Review of Application - The Building Inspector, is responsible for receiving applications and examining the plans and specifications for the proposed construction or development.

After reviewing the application, the Building Inspector shall require any additional measures which are necessary to meet the minimum requirements of this document.

5.6.5.6.1 The Building Inspector shall review 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.

5.6.5.6.2 The Building Inspector shall review all permit applications to determine whether proposed building sites will be reasonably safe from flooding. If a proposed building site is in a special flood hazard area, all new construction and substantial improvements (including the placement of prefabricated buildings and manufactured homes) shall;

- i) be 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.
- ii) be constructed with materials resistant to flood damage
- iii) be constructed by methods and practices that minimize flood damage and
- iv) be 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.

5.6.5.6.3 The Planning Board and Building Inspector shall review subdivision proposals and other proposed new development to determine whether such proposals will be reasonably safe from flooding. If a subdivision proposal or other proposed new development is in a special flood hazard area, any such proposals shall be reviewed to assure that

- i) all such proposals are consistent with the need to minimize flood damage within the special flood hazard area,

- ii) all public utilities and facilities, such as sewer, gas, electrical, and water systems are located and constructed to minimize or eliminate flood damage, and
- iii) adequate drainage is provided to reduce exposure to flood hazards.

5.6.5.6.4 The Building Inspector shall require that all subdivision proposals and other proposed new developments greater than 50 lots or 5 acres, whichever is the lesser, include within such proposals base flood elevation data.

5.6.5.6.5 The Planning Board and Building Inspector shall require within special flood hazard areas new and replacement water supply systems to be designed to minimize or eliminate infiltration of flood water into the systems and discharges from the systems into flood waters.

5.6.5.6.6 The responsible person shall require within special flood hazard areas

- i) new and replacement sanitary sewage systems to be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters and
- ii) on-site waste disposal systems to be located to avoid impairment to them or contamination from them during flooding.

5.6.5.6.7 The applicant shall obtain, and reasonably utilize any base flood elevation data available from a Federal, State or other source, including data submitted for development proposals submitted to the Town (i.e. subdivisions, site plan approvals). In Zone A where a base flood elevation is not known, the flood elevation shall be at least 2 feet above the highest adjacent grade. The base flood elevation will be used as criteria for requiring that

- i) all substantial improvements of residential structures have the lowest floor (including basement) elevated to or above the base flood elevation and
- ii) all substantial improvements of nonresidential structures have the lowest floor (including basement) elevated or flood proofed to or above the base flood elevation and 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.

5.6.5.6.8 For all substantially improved structures located in special flood

hazard areas, the applicant shall furnish the following information to the Building Inspector:

- i) The as-built elevation (in relation to mean sea level) of the lowest floor (including basement) and include whether or not such structures contain a basement.
- ii) If the structure has been flood proofed, the as-built elevation (in relation to mean sea level) to which the structure was flood proofed.
- iii) Any certification of flood proofing.

The Building Inspector shall maintain for public inspection, and shall furnish such information upon request.

5.6.5.6.9 In riverine situations, prior to the alteration or relocation of a water course the applicant for such authorization shall notify the Wetlands Bureau 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 Bureau.

5.6.5.6.10 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 water course can and will be maintained.

5.6.5.6.11 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 requirements:

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.

5.6.5.6.12 The Building Inspector shall require that all manufactured homes to be placed within a special flood hazard area shall be elevated on a permanent foundation such that the lowest floor of the manufactured home is at or above the base flood elevation; and shall be securely anchored to resist flotation, collapse, or lateral movement by providing over-the-top and frame ties to ground anchors. Specific requirements shall be that

- i) over-the-top ties be provided at each of the four corners of the manufactured home, with two additional ties per side at intermediate locations and manufactured homes less than 50

feet long requiring one additional tie per side;

- ii) frame ties be provided at each corner of the home with five additional ties per side at intermediate points and manufactured homes less than 50 feet long requiring four additional ties per side;
- iii) all components of the anchoring system be capable of carrying a force of 4,800 pounds; and
- iv) any additions to the manufactured home be similarly anchored.

5.6.5.6.13 All recreational vehicles placed on sites within a special flood hazard area shall either:

- i) Be on the site for fewer than 180 consecutive days;
- ii) Be fully licensed and ready for highway use; or
- iii) Meet all standards of this ordinance and the elevation and anchoring requirements for “manufactured homes” in section 5.5.6.12 of this ordinance.

5.6.5.6.14 For all substantial improvements , fully enclosed areas below the lowest floor that are subject to flooding are permitted provided they meet the following requirements:

- i) The enclosed area is unfinished or flood resistant, usable solely for the parking of vehicles, building access or storage;
- ii) The area is not a basement;
- iii) Shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of flood water. 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: A minimum of two openings having a total net area of not less than one square inch of 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, or other coverings or devices provided that they permit the automatic entry and exit of flood water.

5.6.5.6.15 Variances and Appeals

1. Any order, requirement, decision or determination of the Building Inspector made under this Ordinance may be appealed to the Zoning Board of Adjustment as set forth in RSA 676:5
2. If the applicant, upon appeal, requests a variance as

authorized by RSA 674:33, I(b), the applicant shall have the burden in demonstrating that the grant of a variance is not contrary to the public interest or the spirit of the Ordinance to prove that:

- a) The variance will not result in increased flood heights, additional threats to public safety, or extraordinary public expense.
- b) If the requested variance is for activity within a designated regulatory floodway, no increase in flood levels during the base flood discharge will result.
- c) The variance is the minimum necessary, considering the flood hazard, to afford relief.

3. 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 or 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.

4. The community shall:

- a) Maintain a record of all variance actions, including their justification for their issuance, and
- b) Report such variances issued in an annual or bi-annual report submitted to FEMA's Federal Insurance Administrator.