

## Section 212 - Floodplain Development Ordinance

This ordinance, adopted pursuant to the authority of RSA 674:16, shall be known as the Town of Newport Floodplain Development Ordinance. The regulations and maps in this ordinance shall overlay and supplement the regulations in the Town of Newport Zoning Ordinance, and shall be considered part of the Zoning Ordinance for purposes of administration and Appeals under state law. Uses are allowed based on the underlying zoning district provided the development of those uses complies with the provisions of this floodplain development ordinance. If any provision of this ordinance differs or appears to conflict with any other provision of the Zoning Ordinance or other ordinance or regulation, the provision imposing the greater restriction or more stringent standard shall be controlling.

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 Town of Newport, N. H.” together with the associated Flood Insurance Rate Maps, and Flood Boundary & Floodway Maps of the town dated May 23, 2006 which are declared to be a part of this ordinance and are hereby incorporated by reference.

### Section 212.1 Definition of Terms:

The following definitions shall apply only to this Floodplain Development Ordinance, and

shall not be affected by the provisions of any other ordinance of the Town of Newport.

“Area of Special Flood Hazard” is the land in the floodplain within the Town of Newport subject to a one-percent or greater possibility of flooding in any given year. The area is designated as Zone A and AE on the Flood Insurance Rate Map.

“Base Flood” means a flood having a one-percent possibility of being equaled or exceeded in any given year. A base flood is also known as a 100-year flood.

“Base Flood Elevation” means the highest elevation that a base flood will reach as indicated on the FIRM. The base flood elevation is also known as the 100-year flood elevation.

“Basement” means any area of a building having its floor sub grade on all sides.

“Building” - see “structure”

“Breakaway wall” means 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.

“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, drilling operation, or storage of equipment or materials.

“FEMA” means the Federal Emergency Management Agency.

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

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

28  
“Flood Elevation Study” means 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) means an 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 Newport.

“Flood Insurance Study” - see “Flood elevation study”.

“Floodplain” or “Flood-prone area” means any land area susceptible to being inundated by water from any source (see definition of “Flood”).

“Flood proofing” means any combination of structural and non- structural addition, 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” means a use which cannot perform its intended purpose unless it is located or carried out in close proximity to water.

“Highest adjacent grade” means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

“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 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.

“100-year flood” - see “base flood.”

“Lowest Floor” means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, useable 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.

“Manufactured Home” means 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<sup>29</sup> other similar vehicles placed on site for greater than 180 days. This includes manufactured homes located in a manufactured home park or subdivision.

“Manufactured Home Park or Subdivision” means a parcel (or contiguous parcels) of land

divided into two or more manufactured home lots for rent or sale.

“Mean sea level” means 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” 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.

“Recreational Vehicle” means a vehicle which is (a) built on a single chassis; (b) 400 square feet or less when measured at the largest horizontal projection; (c) designed to self-propelled or permanently towable by a motorized vehicle; and (d) designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

“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 cumulatively increasing the water surface elevation more than a designated height. These areas are designated as floodways on the FIRM Map.

“Special flood hazard area” - see “Area of Special Flood Hazard”.

“Structure” means 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.

“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.

“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.

“Substantial Improvement” means any combination of repairs, reconstruction, alteration, or improvements to a structure in which the cumulative cost equals or 30 exceeds fifty percent of the market value of the structure. The market value of the structure should equal: (1) the appraised value 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. 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 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 a “historic structure”, provided that the alteration will not preclude the structure’s continued designation as a “historic structure”.

“Violation” means 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 in 44CFR § 60.3(b)(5), (c)(4), (c)(10), (d)(3), (e)(2), (e)(4), or (e)(5) is presumed to be in violation until such time as that documentation is provided.

“Water Surface Elevation” means 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.

(This section was amended May 9, 2006)

#### Section 212.2 - Building Permit

All proposed development in any special flood hazard areas shall require a building permit. The Building Inspector shall specify the base flood elevation on every building permit issued pursuant to the FDO.

#### Section 212.3 - Review of Application

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 or substantial improvements shall:

- A. be designed (or modified) and adequately anchored to prevent floatation, collapses, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;
- B. be constructed with material resistant to flood damage;
- C. be constructed by methods and practices that minimize flood damages; and
- D. 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. 31

#### Section 212.4 - Water & Sewer Systems

Where new or 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 212.5 - Additional Information

For all new or substantially improved structures located in Zone AE, the applicant shall furnish the following information to the Building Inspector:

(a) The as-built elevation (in relation to NGVD) of the lowest floor (including basement) and include whether or not such structures contain a basement.

(b) If the structure has been flood-proofed, the as-built elevation (in relation to NGVD) to which the structure was flood-proofed and any certification of flood-proofing.

(c) All as built elevations shall be determined by a New Hampshire registered land surveyor or engineer.

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

#### Section 212.6 - Other Applicable Regulations

A. 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 local, federal or state law, including Section 404 of the Federal Clean Water Act of 1972, 33 U.S.C 1334 as amended.

B. The Building Inspector shall not issue a certificate of occupancy until the applicant demonstrates that the project complies with all applicable provisions of the FDO.

#### Section 212.7 - Miscellaneous

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 Environmental Services and submit copies of such notification to the Planning Director, 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 Planning Director, including notice of all scheduled hearings before the Wetlands Board.

B. The Applicant shall submit to the Planning Director, certification provided by a New Hampshire registered professional engineer, assuring that the flood carrying capacity of an altered or relocated watercourse can and will be maintained.

C. Along watercourses with a designated Regulatory Floodway, no encroachments, including fill new construction, substantial improvements, and other development are allowed within the floodway unless it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practices that the proposed encroachment would not result in any increase in flood levels within the community during the base flood discharge. 32

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 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.

#### Section 212.8 - Special Flood Hazard Area

A. In special flood hazard areas the Planning Director shall determine the 100-year flood elevation in the following order of precedence according to the data available:

(1) In Zones AE, refer to the elevation data provided in the community's Flood Insurance Study and accompanying FIRM.

(2) In A zones the Planning Director shall obtain, review, and reasonably utilize any 100-year flood elevation data available from any federal, state or other source including data submitted for development proposals submitted to the community

(i.e. subdivisions, site approvals).

B. The Planning Director's 100-year flood elevation determination will be used as criteria for requiring in Zone AE that:

(1) All new construction or substantial improvement of residential structures shall have the lowest floor (including basement) elevated to or above the 100 year flood elevation;

(2) That all new construction or substantial improvements of non-residential structures shall 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 flood-proofed 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 New Hampshire registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards or practice for meeting the provisions of this section;

(3) All new residential structures or residential developments and all new non-residential structures and non-residential developments shall have all driveways and/or all road access or streets constructed with the driving surface at or above the base flood elevation in order to ensure safe ingress and egress during a 100-year flood.

(4) All new manufactured homes and replacement 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 elevation; and be securely anchored to resist floatation, 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 33 in addition to applicable state and local anchoring requirements for resisting wind forces.

(5) For all new construction and substantial improvements, fully enclosed areas below the lowest floor that are subject to flooding are permitted provided they meet all of the following requirements: (1) the enclosed area is unfinished or flood resistant, useable solely for the parking of vehicles, building access or storage; (2) the area is not a basement; (3) the enclosed 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 New Hampshire 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 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, or other coverings or devices provided that they permit the automatic entry and exit of floodwater.

C. Recreational vehicles placed on sites within Zone AE shall either (1) be on the site for fewer than 180 consecutive days; (2) be fully licensed and ready for highway use; or (3) meet all standards of Section 60.3(b)(1) of the National Flood Insurance

Program (NFIP) Regulations and the elevation and anchoring requirements for manufactured homes in paragraph (c)(6) of Section 60.3 (NFIP).

Section 212.9 - Variances and Appeals:

A. Any order, requirement, decision or determination of the Building Inspector or Planning Director made under this ordinance 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), the applicant shall have the burden of showing in addition to the usual variance standards under state law:

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.
3. that the variance is the minimum necessary, considering the flood hazard, to afford relief.

C. After submittal of the variance application, the Zoning Board of Adjustment shall notify the applicant in writing that: (i) the issuance of a variance to construct below the base flood elevation will result in increased premium rates for flood insurance up to amounts as high as \$25 for \$100 of insurance coverage and (ii) such construction below the base flood elevation increases risks to life and property. Such notification shall be maintained with a record of all variance actions.

D. The community shall (i) maintain a record of all variance actions, including the justification for their issuance, and (ii) report such variances issued in its annual or biennial report submitted to FEMA's Federal Insurance Administrator. 34

Section 213 - Professional Business District (PB)

Section 213.1 - Authority and Purpose

A. Pursuant to the authority of RSA 674:16 - 17 and RSA 674:20 - 21 and in the interest of public health, safety, and general welfare and in the public's interest in the historic heritage of the Town of Newport, the Professional Business District is hereby established as a zoning district. The purpose of this district shall be to:

1. Safeguard, enhance and perpetuate the architecturally historic structures within the district;
2. Protect and enhance the visual attractiveness of the town to home buyers, business people, tourists, visitors and shoppers and thereby support and promote business, commerce, and industry and provide economic benefit to the town;
3. Conserve and improve the value of property within the historic district;
4. Foster and encourage the preservation, restoration, and rehabilitation of historic structures, areas, and neighborhoods thereby preventing future urban blight;
5. Foster civic pride in the beautiful and noble architectural accomplishments of the past; and
6. Promote the use of the historic district for the education, pleasure and welfare of the town's people.

Section 213.2 - District Boundaries

A. The Professional Business district shall be delineated by the following boundaries:

1. Proceeding from the southeasterly corner of property situated on Lot No.1384, Tax Map 43 in a westerly direction for a distance of 200 feet along the northerly curb

of Pearl Street; thence in a northerly direction along a line that is parallel to and setback 200 feet from the westerly curb of North Main Street to a point of intersection with the northerly curb of Belknap Avenue; thence in a westerly direction along the northerly curb of Belknap Avenue to the easterly side of the former C & C railroad right-of-way; thence 200 feet in a northerly direction along the easterly side of the right-of-way; thence in an easterly direction along a line that is parallel to and setback 200 feet from the northerly curb of Belknap Avenue to a point that is 200 feet from the westerly curb of North Main Street; thence in a northerly direction along a line that is parallel to and setback 200 feet from the westerly curb of North Main to a point of intersection with the southerly curb of Oak Street; thence in an easterly direction along the southerly curb of Oak Street across North Main Street to a point of intersection with the easterly curb of North Main Street; thence in a northerly direction along the easterly curb of North Main Street to the northwesterly corner of property situated on Lot No.2123, Tax Map 43; thence in an easterly direction for a distance of 200 feet along the northerly boundary line of this property; thence in a southerly direction along a line that is parallel to and set back 200 feet from the easterly curb of North Main Street to a point of intersection with the southerly curb of Crescent Street; thence in an easterly direction along the southerly curb of Crescent Street to the intersection with a line that is parallel to and setback 200 feet from the easterly curb of Park Street; thence in a southerly direction along the line that is parallel to and setback 200 feet from the easterly 35 curb of Park Street to a point of intersection with the southerly boundary line of property situated on Lot No. 920, Tax Map 45; thence in a westerly direction along the southerly boundary line of this property to a point of intersection with the easterly curb of Park Street; thence in a northerly direction approximately 850 feet along the easterly curb of Park Street to the northerly curb of Park Street; thence in a westerly direction along the northerly curb of Park Street across North Main Street to the southeasterly corner of property situated on Lot No.1541, Tax Map 43; thence in a southerly direction along the westerly curb of North Main Street to the point of beginning on the southeasterly corner of property situated on Lot No. 1384, Tax Map 43 at the intersection of North Main and Pearl Streets.

B. To the extent that the Professional Business District, as herein established, overlays portions of the existing B- 1, R-1 and R-2 zoning districts, those portions of the B-1, R-1 and R-2 zoning districts are hereby abolished and replaced by the Professional Business District. The Professional Business district shall be scaled and illustrated on a new zoning map which shall be titled "Zoning Map No.4 of the Town of Newport, N.H., Professional Business District, dated November 6, 1990" and placed on file in the Town Clerk's Office and the Town Office of Planning and Zoning.

C. Where the boundary line of the Professional Business District divides a lot in single or joint ownership at the time of passage of the district, the regulations for the Professional Business District may be extended to the entire lot by a special exception at the option of the owner(s).

#### Section 213.3 - Uses

##### A. Permitted Uses

One-family dwelling except trailer or mobile home type

Two-family dwelling except trailer or mobile home type



Professional Offices, excluding medical Facilities

Public or private, non-profit schools

Lodging house or bed & breakfast inn containing no more than 8 one-room units

Charitable institution

Church

Public use limited to educational and cultural purposes

Accessory buildings and uses

Accessory apartment that occupies no more than 35% of the principal building and contains no more than one bedroom. The principal building may be either residential or non-residential in principal use. No more than one accessory apartment per principal building on one lot shall be allowed.

Library, public or private

B. Uses Permitted by Special Exceptions

Family daycare home, family group daycare home or group preschool center provided that the children are dropped off and picked up on site.

Adult daycare facility up to and including 12 non- domiciled adults. 36

Mixed uses - more than one of the permitted uses or special exceptions allowed under this section may be allowed on a single lot provided that adequate parking space is available.

A reduction in the required number of parking spaces may be granted.

Medical Facility

Section 213.4 Lot Area and Dimensions

Minimum Lot Area - 10,000 square feet

Minimum Frontage - 75 feet

Minimum Front Yard Setback - 25 feet

Minimum Side Yard Setback - 15 feet

Minimum Rear Yard Setback - 25 feet

Minimum Setback Between Separate Buildings - 10 feet

Maximum Lot Coverage - 30%

Maximum Structure Height - 35 feet