

10.0 FLOODPLAIN CONSERVATION DISTRICT

This Chapter 10, "Floodplain Conservation District," is the "Floodplain Development Ordinance" for the Town of Wilton, NH. It is intended to be read in conjunction with the remainder of the Wilton Zoning Ordinance (Zoning Ordinance) for purposes of administration and appeals under State law. If any provision of this Chapter differs from or appears to conflict with any other provision of the Zoning Ordinance or any other ordinance or regulation, the provision imposing the stricter requirement or standard shall be controlling.

The following regulations shall apply to all lands designated as areas of special flood hazard by the Federal Emergency Management Agency (FEMA) in its "Flood Insurance Study for the County of Hillsborough, N.H." dated September 25, 2009, as it may from time to time be amended, together with the associated Flood Insurance Rate Maps (FIRM) dated September 25, 2009, as they may from time to time be amended, which are declared to be a part of this Chapter 10 and are hereby incorporated by reference.

10.1 Definitions.

Words and phrases defined below have the meanings in this section when they are used in this Chapter 10. Definitions in this section are not applicable outside of this Chapter unless they are accompanied by an explicit reference to this Chapter. Definitions in Chapter 3 of the Zoning Ordinance are applicable in this Chapter unless they conflict with a definition in this Chapter, in which case the definition on this section shall apply.

- 10.1.1 Area of Special Flood Hazard. The land in the flood plain within the Town of Wilton subject to a 1 percent or greater chance of flooding in any given year. The area is designated as Zones A or AE on the Flood Insurance Rate Map where such mapping has been completed.
- 10.1.2 Base Flood. The flood level having a one-percent possibility of being equaled or exceeded in any given year.
- 10.1.3 Base Flood Elevation (BFE). The elevation of surface water resulting from a Base Flood event.
- 10.1.4 Basement. Any area of a building having its floor subgrade (below ground level) on all sides.
- 10.1.5 Development. Any man-made change to improved or unimproved real estate, including but not limited to (a) drilling or mining operations, (b) the erection or expansion of a structure, (c) clearing, dredging, filling, grading, paving or excavation or (d) storage of any materials or equipment in connection therewith.
- 10.1.6 FEMA. The Federal Emergency Management Agency.
- 10.1.7 Flood or Flooding. A general and temporary condition of partial or complete inundation of two or more acres of normally dry land area or of two or more properties as a result of:
- a. The overflow of inland or tidal waters;
 - b. The unusual and rapid accumulation or runoff of surface waters from any source;
 - c. Mudslides (i.e., mudflows) which are proximately caused by flooding and are akin to a river of liquid and flowing mud on the surfaces of normally dry land areas, as when earth is carried by a current of water and deposited along the path of the current; and/or
 - d. Collapse or subsidence of land along the shore of a lake or similar body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels that result in a flood as defined above.

- 10.1.8 Flood Insurance Rate Map (FIRM). An official map incorporated into this Chapter on which FEMA has delineated both the areas of special flood hazard and the risk premium zones applicable to the Town of Wilton. The FIRM will be used to make determinations of flood hazard zones and Base Flood Elevations.
- 10.1.9 Flood Insurance Study (FIS). A compilation and presentation of flood risk data for specific watercourses, lakes and coastal flood hazard areas within a community.
- 10.1.10 Floodplain or flood-prone area. Any land area susceptible to flooding by any source during a Base Flood event.
- 10.1.11 Flood opening. An opening in a foundation or enclosure wall that allows automatic entry and exit of floodwaters. See FEMA "Technical Bulletin 1, Requirements for Flood Openings in Foundation Walls and Walls of Enclosures."
- 10.1.12 Floodproofing or floodproofed. Any combination of structural and/or non-structural additions, changes or adjustments to structures that reduce or eliminate flood damage to real estate or improved real property, water or sanitation facilities, or structures or their contents.
- 10.1.13 Highest adjacent grade. The highest natural elevation of the ground surface next to any point on the proposed walls of a structure prior to construction.
- 10.1.14 Historic Structure. Any structure that is:
- a. Listed individually in the National Register of Historic Places 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 that 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.
- 10.1.15 Lowest floor. The lowest floor of the lowest enclosed area (including the basement) of a structure. 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 does not render the structure in violation of the applicable non-elevation design requirements of this Chapter.
- 10.1.16 Manufactured home. A structure, transportable in one or more sections, built on a permanent chassis and designed for use with or without a permanent foundation when attached to the required utilities. For floodplain management purposes, the term "manufactured home" includes park trailers, travel trailers and other similar vehicles placed on site for more than 180 consecutive days, and includes manufactured homes located on a single parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale, but does not include a recreational vehicle.
- 10.1.17 Mean sea level. The National Geodetic Vertical Date (NGVD) of 1929, North American Vertical Datum (NAVD) of 1988, or other datum, to which Base Flood Elevations shown on a community's FIRM are referenced.

- 10.1.18 New construction. For 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.
- 10.1.19 Recreational vehicle. A vehicle that is (i) built on a single chassis; (ii) 400 square feet or less when measured at the largest horizontal projection; (iii) designed to be self-propelled or permanently towable by a light duty truck; and (iv) designed primarily for use as temporary living quarters for recreational, camping, travel or seasonal use (not for use as a permanent dwelling).
- 10.1.20 Regulatory Floodway. The channel of a river or other watercourse and the adjacent land areas that must be preserved from encroachment in order to discharge the base flood without a cumulative increase of the water surface elevation beyond a designated height.
- 10.1.21 Structure. For floodplain management purposes, a walled and roofed building, a manufactured home or a gas or liquid storage tank, in each case that is principally above ground.
- 10.1.22 Start of construction. The date of the building permit issued for a structure or a substantial improvement thereof, provided, that the actual start of construction, repair, reconstruction, placement or other improvement began in accordance with the requirements of the building permit and during such time while such building permit was in effect. "Actual start" is either the placement of the first permanent element of a structure or any substantial improvement on site, such as the pouring of a 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. In the context of a substantial improvement, "actual start" shall also include when the demolition of an existing structure as part of that substantial improvement begins. Placement of a permanent element does not include land preparation, such as clearing, grading and filling, nor does it include the installation of driveways, streets and/or walkways; excavation for a basement, footings, piers or foundations; the erection of temporary forms or the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or part of the main structure.
- 10.1.23 Substantial damage. Damage of any origin sustained by a structure whereby the cost of restoring the structure to its prior condition would equal or exceed 50% of the pre-damage market value of the structure.
- 10.1.24 Substantial improvement. Any combination of repairs, reconstruction, rehabilitation, renovation, addition or other improvement to a structure, the estimated total cost (including the market value of donated or discounted services or materials) of which equals or exceeds fifty percent of the market value of the structure before the start of construction of the improvement. A substantial improvement includes repair of structures that have incurred substantial damage, regardless of the actual repair work performed, but does not include either (a) any project for improvement of a structure to correct existing violations of state or local health, sanitary or safety requirements identified by the local code enforcement official and necessary to assure safe living conditions or (b) any alteration of a Historic Structure, provided that the alteration will not preclude the structure's continued designation as a Historic Structure. For the purpose of determining whether a "substantial improvement" has occurred, the estimated total cost shall include the cumulative cost of successive projects occurring within a continuous running 12-month period.

- 10.1.25 Violation. The failure of a structure or other development to be fully compliant with this Chapter.
- 10.1.26 Watercourse. A river, stream, brook or artificially constructed water channel, together with their tributaries, and any water impoundment areas naturally or artificially created relating to any thereof.
- 10.1.27 Water surface elevation. The height, in relation to the National Geodetic Vertical Datum (NGVD) of 1929, North American Vertical Datum (NAVD) of 1988, or other datum, where specified, of floods of various magnitudes and frequencies in the floodplains.

10.2 Permit Required.

All proposed development in any Area of Special Flood Hazard shall require a permit from the Building Inspector, who shall review all requests for development as well as all building permit applications for new construction or substantial improvements to determine whether the sites of proposed development, substantial improvement, or new construction will be reasonably safe from flooding and compliant with the terms of this Chapter.

The Building Inspector will not issue a building permit or approve other development in any Area of Special Flood Hazard until the applicant certifies and provides reasonable proof that all necessary permits have been received from those governmental agencies whose approval is required by federal or state law, including, without limitation, Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334.

In addition, the applicant shall supply the Building Inspector with the following information for all proposed new or substantially improved structures:

- a. The as-built elevation (in relation to mean sea level) of the lowest floor and whether or not the structure contains a basement;
- b. If the structure has been floodproofed, the as-built elevation (in relation to mean sea level) to which the structure was floodproofed; and
- c. Any certification of floodproofing.

The Building Inspector shall maintain this information for public inspection and furnish it upon request.

10.3 Location of Base Flood Elevation.

In Areas of Special Flood Hazard, the Building Inspector shall determine the Base Flood Elevation in the following order of precedence according to the data available:

- a. In Zone AE, refer to the elevation data provided in the communities Flood Insurance Study and accompanying FIRM;
- b. In Zone A, the Building Inspector may obtain, review and reasonably utilize any Base Flood Elevation data available from any federal, state, or other source, including data submitted to the Town of Wilton in connection with development proposals (e.g., subdivisions, site plan approvals) by a qualified engineer, architect or surveyor. Where the Building Inspector determines that a Base Flood Elevation is not reasonably available or ascertainable for Zone A, the Base Flood Elevation shall be determined to be at least two feet above the highest adjacent grade.

10.4

Construction Standards.

- a. All new construction or substantial improvements within an Area of Special Flood Hazard shall be:
 1. 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;
 2. Constructed with materials resistant to flood damage;
 3. Constructed by methods and practices that minimize flood damage; and
 4. Constructed with electrical, heating, ventilation, plumbing, 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 flooding.
- b. Any new construction or substantial improvements within the A and AE Zones shall meet the following requirements:
 1. For residential structures, the lowest horizontal structural member of the lowest floor shall be elevated to or above the Base Flood Elevation;
 2. For non-residential structures, the lowest horizontal structural member of the lowest floor shall be elevated to or above the Base Flood Elevation or, together with attendant utility and sanitary facilities, shall:
 - a) Be floodproofed so that areas below the Base Flood Elevation the structure are 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 to meet the requirements of this section;
- c. All manufactured homes to be placed or substantially improved within an Area of Special Flood Hazard shall be elevated on permanent foundations such that the lowest structural member of the lowest floor is at or above the Base Flood Elevation and securely anchored to resist flotation, collapse or lateral movement. Methods of anchoring may include, without limitation, 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.
- d. Recreational vehicles placed on sites within Zone A or AE shall either: (1) (i) be on the site for fewer than 120 consecutive days and (ii) be fully licensed and on wheels or jacking systems, attached to the site only by quick disconnect type utilities and security devices, with no permanently attached additions; or (2) meet all standards of this Chapter and the elevation and anchoring requirements for manufactured homes in paragraph (c) above.
- e. For all new construction and substantial improvements, fully enclosed areas below the lowest floor that are subject to flooding are permitted, provided they meet the following requirements:
 1. The enclosed area is unfinished or flood resistant and usable solely for the parking of vehicles, building access, or storage;
 2. The area is not a basement;

3. The area is designed to automatically equalize hydrostatic flood forces or exterior walls by allowing for the entry and exit of floodwaters, either as certified by a registered professional engineer or architect or by meeting or exceeding the following minimum requirements:
 - a) A minimum of two flood openings having a total net area not less than one square inch for every square foot of enclosed space subject to flooding shall be provided;
 - b) The bottom of all flood openings shall be no higher than one foot above grade; and
 - c) Flood openings may be equipped with screens, louvers or other coverings or devices, provided that they permit the automatic entry and exit of floodwaters.
- f. Where new or replacement water and sewer systems (including on-site systems) are proposed in Areas of Special Flood Hazard, the applicant shall provide the Building Inspector with assurance that these systems will be designed to minimize or eliminate infiltration of floodwaters into the systems and discharges from the systems into floodwaters, and that on-site waste disposal systems will be located to avoid impairment to them or contamination from them during flooding.

10.5 Alteration of Water Courses.

Any proposed development involving the alteration of a watercourse shall be noticed and authorized as follows, and shall otherwise meet the following requirements, which shall be in addition to all other requirements and limitations in the Zoning Ordinance:

- a. The applicant proposing such alteration shall notify the Wetlands Bureau of the New Hampshire Department of Environmental Services (Wetlands Bureau) and submit copies of such notification, including notice of all scheduled hearings before the Wetlands Bureau, (1) to the Building Inspector, (2) as required by RSA 482-A:3 and (3) to those adjacent communities identified by the Building Inspector.
- b. The applicant shall submit to the Building Inspector a certification prepared, signed, and stamped 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 with a 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 by a registered professional engineer in accordance with standard engineering practices that the proposed encroachment would not result in any increase in flood levels within the Town of Wilton or any adjacent community during the Base Flood discharge.
- d. If there is no Regulatory Floodway along a watercourse or portion thereof, no new construction, substantial improvements or other development (including fill) shall be permitted within Zone AE along that watercourse unless it is demonstrated by the applicant that the 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 Town of Wilton or any adjacent community.
- e. Based on review and reasonable utilization of floodway data available from Federal, state or other sources, the Building Inspector shall determine that no encroachments, including dredge, fill, topographical alterations, new construction, substantial improvements or other development located in Zone A could result in any increase in flood levels within the community during the Base Flood discharge.

10.6

Variances and Appeals.

- a. Any order, requirement, decision or determination of the Building Inspector that interprets, applies, or construes this Chapter may be appealed to the Zoning Board of Adjustment (ZBA) as set forth in RSA 676:5.
- b. If the applicant, upon appeal, requests a variance as authorized by RSA 674:33, I, in addition to the variance standards set forth in RSA 674:33, I(b), the ZBA shall only grant a variance upon a finding that the grant of a variance satisfies the requirements of 44 C.F.R. § 60.6(a), as amended, which includes finding that:
 - i. For variances for developments, new construction or substantial improvements within any designated Regulatory Floodway there will be no increase in flood levels during the Base Flood discharge;
 - ii. For variances for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the Base Flood level;
 - iii. The applicant has proved that:
 1. good and sufficient cause exists for the grant of the variance;
 2. failure to grant the variance would result in exceptional hardship to the applicant; and
 3. the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, or create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances; and
 - iv. The variance is the minimum necessary, considering the flood hazard, to afford relief;
- c. If the ZBA grants the variance, it shall notify the applicant in writing that:
 - i. The issuance of a variance to construct below the base flood level will result in substantially increased premium rates for flood insurance as high as \$25 for \$100 of insurance coverage; and
 - ii. Such construction below the base flood level will increase risks to life and property.

Such notification shall be maintained with a record of all variance actions.
- d. The Town of Wilton shall maintain a record of all variance actions, including the justification for their issuance or denial and shall report the issuance of any variance to FEMA's Federal Insurance Administrator in its annual or biennial report.