

## **Article XXI**

### **Flood Hazard Area Overlay District**

#### **Section 1. TITLE AND AUTHORITY**

- A. The title of this District shall be the Town of Madbury Flood Hazard Area Overlay District.
- B. This ordinance is adopted under the authority granted pursuant to RSA 674:16, Grant of Power, and RSA 674:21, Innovative Land Use Controls, and 674:56, Floodplain Ordinances.

The regulations in this ordinance shall overlay and supplement the regulations in the Town of Madbury 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.

#### **Section 2. PURPOSE**

The purpose of the Flood Hazard Area Overlay District is to protect the health and safety of residents by promoting the most appropriate use of land in Flood Hazard Areas, including:

- A. Uses which will result in no increase in base flood levels, flows, peaks or velocity.
- B. Uses which will not increase the potential for flood damage to the owner's property or that of others.
- C. Uses which will protect the benefits provided to the community by the floodplain.
- D. Uses which will result in no increase in erosion and/or sedimentation or other degradation of water quality.
- E. Uses which will not increase the risk to public safety, or to emergency personnel during flood events, or result in an increase in the cost of public services above costs incurred when not in a floodplain.

#### **Section 3. DISTRICT BOUNDARIES**

- A. The provisions of the Flood Hazard Area Overlay District shall apply to all lands designated as special flood hazard areas by the Federal Emergency Management Agency (FEMA) in its "Flood Insurance Study for Strafford County, 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.

#### **Section 4. PERMITS**

- A. All proposed development in the Flood Hazard Area Overlay District shall require a permit.
- B. The building inspector shall review all building permit applications for new construction,

additions to existing structures, and substantial improvement to determine whether the proposed site is within the Flood Hazard Area Overlay District. If the site is determined to be within the Flood Hazard Area Overlay District, the building inspector shall review the application to ensure that the proposal is in compliance with all provisions of this ordinance.

### **Section 5. PERMITTED USES**

The following uses are permitted provided they are consistent with the purposes of this ordinance and do not involve the placement, expansion or construction of permanent structures or other materials that could impede floodwaters or become flood-carried debris:

- A. Agricultural activities consistent with current best management practices as published by the New Hampshire Department of Agriculture.
- B. Forest Management consistent with current accepted best management practices as outlined in the Best Management Practices for Erosion Control on Timber Harvesting Operations in New Hampshire, Department of Resources and Economic Development, April 1996, updated February 2000.
- C. Outdoor recreation, such as play areas, boating, hunting, fishing, trails for motorized or nonmotorized use.
- D. Wildlife or fisheries management.
- E. Scientific research and educational activities.
- F. Home occupations in existing residences consistent with Article V-B Home Occupations of this Zoning Ordinance
- G. Replacement water and sewer systems, including on-site systems, provided that 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.
- H. Substantial improvement not involving an addition.

### **Section 6. PROHIBITED USES**

The following uses are not permitted in this district.

- A. New habitable buildings or other structures (except as allowed below by Special Exception).
- B. Processing or storage of excavation materials.
- C. Storage of construction or other materials which would impede flow of floodwaters.
- D. Filling.

- E. Grading that results in obstruction of flood flows or reduces flood storage capacity.
- F. Dumping.
- G. Wastewater or septage treatment facilities.
- H. Storage of floatable, or toxic, hazardous, or regulated substances. (Quantities typical for household use are permissible if stored 1 to 3 feet or more above base flood elevation.)
- I. Unsecured tanks.
- J. Junkyards.
- K. Landfills.
- L. Subdivision of land that would create a parcel that had no developable land outside the Flood Hazard area.

**Section 7. LIMITED AND REGULATED USES**

A. The following land uses are allowed in the Flood Hazard Overlay District, subject to the restrictions of the underlying district, if the Planning Board approves a Conditional Use Permit. Application for Conditional Use Permit shall be submitted to the Planning Board before such use is started, increased, or changed.

B. Conditional Use Permit application is initiated by Site Plan Review application in accordance with Planning Board Site Plan Review regulations. The Planning Board may require independent technical review and analysis of sites and applications. The costs of all such review and analysis shall be borne by the applicant.

C. The Planning Board may grant a Conditional Use Permit for the following uses if it determines, based on evidence provided by the applicant, that the use conforms to the standards provided in Sections 8 through 13 below and the purposes of the Flood Hazard Area Overlay District listed in Section 2 above:

1. Water impoundments for the purpose of creating a water body for wildlife, fire safety, onsite detention of stormwater runoff and/or recreational uses.
2. Water-dependent uses, such as docks, boathouses, and water powered projects.

The following additional uses may also be permitted by Conditional Use Permit if, in addition to meeting the conditions listed above, the use is not in a floodway:

3. Addition to existing structures, including manufactured homes, and replacement of manufactured homes.
4. Accessory structures to existing primary uses when it is not practicable to construct the accessory structure on a portion of the lot outside of the Flood Hazard Area Overlay District.

5. One principal building on a preexisting lot of record with no developable land outside Flood Hazard Area Overlay District.

6. New or expanded septic systems if no suitable location exists for the system on a portion of the lot outside of the Flood Hazard Area Overlay District.

7. Construction, repair or maintenance of streets, roads, and other access ways, including driveways, footpaths and bridges, and utility right-of-way easements, including power lines and pipe lines, wastewater collection facilities and pump stations, if essential to the productive use of land adjacent to the Flood Hazard Area Overlay District.

8. Undertaking of a use not otherwise permitted in the Flood Hazard Area Overlay District, if it can be shown that such proposed use does not involve the erection of structures or filling and is in accordance with all of the purposes of the District as listed in Section 2, and those of the underlying zoning district.

### **Section 8. CONSTRUCTION REQUIREMENTS**

The Building Inspector shall review all building permit applications for new construction, additions, or substantial improvements to determine whether proposed buildings will be reasonably safe from flooding. If a proposed building site is located in the Flood Hazard Area Overlay District, all new construction, additions, or substantial improvements shall:

A. be designed (or modified) and adequately anchored to prevent floatation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy,

B. be constructed with materials resistant to flood damage,

C. be constructed by methods and practices that minimize flood damages,

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.

### **Section 9. WATER AND SEWER SYSTEMS**

Where new or replacement water and sewer systems (including on-site systems) are proposed in the Flood Hazard Area Overlay District 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 10. CERTIFICATION OF FLOODPROOFING**

A. For all new, expanded, or substantially improved structures located in the Flood Hazard Area Overlay District, the applicant shall furnish the following information to the Building Inspector:

1. the as-built elevation (in relation to [NGVD mean sea level](#)) of the lowest floor (including basement) and include whether or not such structures contain a basement.

2. if the structure has been floodproofed, the as-built elevation (in relation to [NGVD mean sea level](#)) to which the structure was floodproofed.

3. any certification of floodproofing.

B. The Building Inspector shall maintain the aforementioned information for public inspection and shall furnish such information upon request.

### **Section 11. OTHER PERMITS**

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. 1334.

### **Section 12. WATERCOURSES**

A. In riverine situations, prior to the alteration or relocation of a watercourse 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 the 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 and the Madbury Conservation Commission.

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. 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:

1. No encroachments, including fill, new construction, additions, 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.

[D. Until a Regulatory Floodway is designated along watercourses, no new construction, substantial improvements, or other development \(including fill\) shall be permitted within 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.](#)

### **Section 13. DESIGN AND DEVELOPMENT STANDARDS**

A. In Zone A the Building Inspector shall obtain, review, and reasonably utilize any 100-yearbase 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 plan approvals).

B. In Zone A where the base flood elevation is not available, the base flood elevation shall be at least two feet above the highest adjacent grade.

C. In Zone AE, refer to the base flood elevation data provided in the community's Flood Insurance Study and accompanying FIRM.

B. The Building Inspector's 100-yearbase flood elevation determination will be used as criteria for requiring in Zone A and AE that:

1. All new construction, additions, or substantial improvement of residential structures have the lowest floor (including basement) elevated to one foot or more above the 100-yearbase flood elevation.

2. That all new construction, additions, or substantial improvements of non-residential structures have the lowest floor (including basement) elevated to or above the 100-yearbase flood levelevation; or together with attendant utility and sanitary facilities, shall:

a. be floodproofed so that below the 100-yearbase 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, expanded, 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 one foot or more above the 100-yearbase 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.

4. All recreational vehicles placed on sites within Zone A and AE shall either:

a. be on the site for fewer than 180 consecutive days;

b. be fully licensed and ready for highway use; (A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions.) or,

c. meet all standards of Section 8 of this ordinance and the elevation and anchoring requirements for "manufactured homes" in Section 13.B.3 of this section.

5. For all new construction, additions, and substantial improvements, fully enclosed areas below the lowest floor that are subject to flooding are permitted provided they meet the following requirements:

a. the enclosed area is unfinished or flood resistant, usable solely for the parking of vehicles, building access or storage;

b. the area is not a basement; and

c. 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.

#### **Section 14. VARIANCES**

A. 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.

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 that:

1. the variance will not result in increased flood heights, additional threats to public safety, or extraordinary public expense;

2. 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. 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:

4. 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

5. such construction below the base flood level increases risks to life and property.

Such notification shall be maintained by the Zoning Board of Adjustment with a record of all variance actions.

D. The community shall:

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

## **Section 15. DEFINITIONS**

The following definitions shall apply only to this Flood Hazard Area Overlay District, and shall not be affected by the provisions of any other ordinance of the Town of Madbury.

- A. Addition: An expansion of a structure outside of the footprint of the original building.
- B. Base Flood: The flood having a one percent possibility of being equaled or exceeded in any given year.
- C. Base Flood Elevation: The water surface elevation having a one percent possibility of being equaled or exceeded in any given year.
- C. Basement: Any area of a building having its floor subgrade on all sides.
- D. Building - see "structure".
- E. 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, excavating or drilling operation or storage of equipment or materials.
- F. FEMA: The Federal Emergency Management Agency.
- G. Flood or Flooding: A general and temporary condition of partial or complete inundation of normally dry land areas from:
  1. the overflow of inland or tidal waters, or
  2. the unusual and rapid accumulation or runoff of surface waters from any source.
- H. Flood Insurance Rate Map (FIRM): An official map of a community, on which the Administrator has delineated both the special hazard areas and the risk premium zones applicable to the community.
- I. Flood Insurance Study (FIS): An examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations, or an examination, evaluation and determination of mudslide (i.e. mudflow) and/or flood-related erosion hazards.
- J. Floodplain or Flood-prone area: Any land area susceptible to being inundated by water from any source (see definition of "Flooding").
- K. Flood proofing: Any combination of structural and non-structural additions, changes, or adjustments to structures that reduce or eliminate flood damage to real estate or improved real property, water and sanitation facilities, structures and their contents.



L. Floodway- see "Regulatory Floodway".

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

M. Historic Structure: Any structure that is:

1. 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;
2. 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;
3. 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
4. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
  - a. by an approved state program as determined by the Secretary of the Interior, or
  - b. directly by the Secretary of the Interior in states without approved programs.

N. 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;

O. 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 site for greater than 180 consecutive days. This includes manufactured homes located in a manufactured home park or subdivision.

P. Manufactured Home Park or Subdivision: A parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

Q. NGVD Mean Sea Level: The National Geodetic Vertical Datum of 1929, North American Vertical Datum of 1988 or other to which base flood elevations shown on a community's Flood Insurance Rate Maps are referenced. Also referred to as Mean sea level

R. 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.

~~S. 100-year flood—see "base flood"~~

T. Recreational Vehicle is defined as:

1. built on a single chassis;
2. 400 square feet or less when measured at the largest horizontal projection;
3. designed to be self-propelled or permanently towable by a light duty truck; and
4. designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel or seasonal use.

U. 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.

~~V. Special flood hazard area means an area having flood, mudslide, and/or flood-related erosion hazards, and shown on a FIRM as zone A and AE. (See—"Area of Special Flood Hazard")~~

W. 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.

X. 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.

Y. 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 percent of the market value of the structure before the damage occurred.

Z. Substantial Improvement: Any combination of repairs, reconstruction, alteration, or improvements to a structure in which the cumulative cost equals or 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 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".

AA. 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 10 or Section 13.B.2 of this ordinance is presumed to be in violation until such time as that documentation is provided.

BB. ~~Mean sea level~~Water Surface Elevation: The height, in relation to the National Geodetic Vertical Datum (NGVD) of 1929, North American Vertical Datum of 1988, (or other datum, where specified) of floods of various magnitudes and frequencies in the floodplains.