

Tamworth Floodplain Development Ordinance

Town of Tamworth

State of New Hampshire

FLOODPLAIN DEVELOPMENT ORDINANCE

Adopted on August 13, 1991

Amendments Adopted 3/13/07

Amendments Adopted 3/12/13

Amendments Adopted 03/08/16

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ARTICLE I - PURPOSE AND AUTHORITY:

A. To protect public health, safety and welfare of the community by regulating uses of land subject to flooding. Certain areas of the Town of Tamworth, New Hampshire are subject to periodic flooding, causing serious damage 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 Tamworth, 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.

B. This Ordinance, adopted pursuant to the authority of RSA 674:16, is in accordance with the National Flood Insurance Program, Section 60.3(c). If any provision of this Ordinance differs or appears to conflict with any other Ordinance or regulation of the Town of Tamworth, the provision imposing the greater restriction or stringent standard shall be controlling.

ARTICLE II - TITLE

This Ordinance shall be known and may be cited as the "Town of Tamworth Floodplain Development Ordinance." It is hereinafter referred to as "this Ordinance."

ARTICLE III - ESTABLISHMENT OF FLOODPLAIN:

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 Carroll County, N.H.," dated March 19, 2013, together with the associated Flood Insurance Rate Maps, dated March 19, 2013, which are declared to be a part of this Ordinance and are hereby incorporated by reference. The Flood Insurance Study and the Flood Insurance Rate Maps are available for review at the Town Office.

ARTICLE IV - TERMINOLOGY AND DEFINITION OF TERMS

For the purpose of this Ordinance, certain terms or words shall be interpreted as follows:

A. The word "person" includes a firm, association, partnership, trust company or corporation as well as individual, and shall apply as the owner, agent, contractor or others acting on behalf of any of the above. The word "shall" is mandatory; the word "may" is permissive. The words "used" and "occupied" include the words intended, designed or arranged to be used or occupied. The word "lot" includes the words plot or parcel.

B. The present tense includes the future tense: singular includes plural and plural includes singular.

C. All words, terms and provisions of this Ordinance shall be interpreted strictly in accordance with their plain literal and grammatical meaning at the time of writing except such words and terms as are specifically defined in Article IV of this

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Ordinance. In case of dispute as to the meaning of a word, terms or provision, the interpretation of the Board of Adjustment shall be final and binding.

D. The following definitions shall apply only to this Ordinance and shall not be affected by the provisions of any other ordinance of the Town of Tamworth.

Area of Special Flood Hazard is the land in the floodplain within the Town of Tamworth subject to a one-percent or greater possibility of flooding in any given year. The area is designated as Zones A and AE on the FIRM.

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

Basement means any area of a building having its floor subgrade on all sides.

Building - see "structure."

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 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 or tidal waters.
2. The unusual and rapid accumulation or runoff of surface waters from any source.

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 Tamworth.

Flood Insurance 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.

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 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.

Floodway - see "Regulatory Floodway."

Functionally Dependent Use means a use that cannot perform its intended purpose

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unless it is located or carried out in close proximity to water. The term includes only docking and port facilities that are necessary for the loading/unloading of cargo or passengers and ship building/repair facilities, but does not include long-term storage or related manufacturing facilities.

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:

1. Listed individually in the National Register of Historic Places (a listing maintained by the Department of the 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 that 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.

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.

Manufactured Home means a structure, transportable in one or more sections, that 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 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.

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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 communities 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.

100-year Flood - see "Base Flood."

Recreational vehicle means a vehicle that is (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.

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 more than a designated height. [These are designated as floodways on the Flood Boundary and Floodway 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 floodplain permit was issued, provided the actual start of construction, repair, reconstruction, placement, or other improvement was within 180 days of the floodplain 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 shed 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 it's before damaged condition would be equal to 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

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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 dimension 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 that are solely necessary to assure safe living conditions or any alteration of an "historic structure," provided that the alteration will not preclude the structure's continued designation as an "historic structure."

Violation 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 under Article V, I, 2. or Article V, G, 4 of this ordinance 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, North American Vertical Datum (NAVD) of 1988, (or other datum, where specified) of floods of various magnitudes and frequencies in the floodplains.

ARTICLE V - GENERAL PROVISIONS:

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

B. Board of Selectmen or its appointed representative: The Board of Selectmen or its appointed representative shall review all floodplain 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:

1. 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;
2. Be constructed with materials resistant to flood damage
3. Be constructed by methods and practices that minimize flood damages:
4. 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.

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C 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 Board of Selectmen or its appointed representative 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.

D. For all new or substantially improved structures located in Zones A and AE, the applicant shall furnish the following information to the Board of Selectmen or its appointed representative:

1. The as-built elevation (in relation to NGVD) of the lowest floor (including basement), and include whether or not such structures contain a basement.
2. If the structure has been flood proofed, the as-built elevation (in relation to NGVD) to which the structure was flood proofed.
3. Any certification of flood proofing.

E. The Board of Selectmen or its appointed representative shall maintain for public inspection and shall furnish such information upon request.

F. The Board of Selectmen or its appointed representative shall not grant a floodplain 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. (Army Corps of Engineers)

G. The following additional requirements apply:

1. 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 Board of Selectmen or its appointed representative, 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 Board of Selectmen or its appointed representative, including notice of all scheduled hearings before the Wetlands Bureau.
2. The applicant shall submit to the Board of Selectmen or its appointed representative certification provided by a registered professional engineer assuring that the flood carrying capacity of an altered or relocated watercourse can and will be maintained.
3. The Board of Selectmen or its appointed representative shall obtain, review, and reasonably utilize any floodway data available from Federal, State, or other sources as criteria for requiring that all development

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located in Zone A meet the following floodway requirement: "No encroachments, including fill, new construction, substantial improvements, and other development are allowed within the floodway that would result in any increase in flood levels within the community during the base flood discharge."

4. Along watercourses that have not had a Regulatory Floodway designated or determined by a federal, state, or other source, 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.

H. In special flood hazard areas, the Board of Selectmen or its appointed representative shall determine the 100 year flood elevation in the following order of precedence according to the data available:

1. In zones-A and AE, refer to the elevation data provided in the community's Flood Insurance Study and accompanying FIRM.

2. In unnumbered A zones, the Board of Selectmen or its appointed representative 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).

I The Board of Selectmen or its appointed representative's 100 year flood elevation determination will be used as criteria for requiring in zones A & AE that:

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

2. That all new construction or substantial improvements of non-residential structures have the lowest floor (including basement) elevated to one foot (1') or more 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 registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting the provisions of this section.

3. All manufactured homes to be placed or substantially improved

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within special flood hazard areas shall be elevated on a permanent foundation so that the lowest floor of the manufactured home is at least one foot (1') or more above the base flood level, and be securely anchored to resist flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable state and local anchoring requirements for resisting wind forces;

4. For all new construction and substantial improvements, fully enclosed areas below the lowest floor that area subject to flooding are permitted, provided they meet the following requirements: (1) the enclosed area is unfinished or flood resistant, usable solely for the parking of vehicles, building access or storage; (2) the area is not a basement; (3) 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: 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 is 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.

5. Recreational vehicles placed on sites within Zones A and 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 Regulations and the elevation and anchoring requirements for "manufactured homes" in Paragraph (c)(6) of Section 60.3.

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.

ARTICLE VI - VARIANCES AND APPEALS:

A. Any order, requirement, decision or determination of the Board of Selectmen or its appointed representative made under this Ordinance may be appealed to the 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 the following 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.

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

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

1. 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

2. 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.

D. The community shall:

1. Maintain a record of all variance actions, including their justification for their issuance, and

2. Report such variances issued in its annual or biennial report submitted to FEMA'S Federal Insurance Administrator.

ARTICLE VII - ADMINISTRATION, ENFORCEMENT AND PENALTY:

A. It shall be the duty of the Board of Selectmen, or its appointed representative, to enforce the provisions of this Ordinance. Subject to the availability of funds appropriated by the Town for such purpose, the Selectmen may appoint a representative to carry out all or such specific duties set forth herein as the Selectmen shall determine.

B. It shall be the duty of the Board of Selectmen to adopt a form or set of standards and fees specifying the minimum contents of a completed application for a floodplain permit. Upon submission of a completed application, the Board of Selectmen or its appointed representative shall act to approve or deny a floodplain permit within thirty (30) days; provided however, that non-residential applications or residential applications encompassing more than ten (10) dwelling units shall be approved or denied within sixty (60) days. (RSA 676:13)

C. Upon any well-founded information that this Ordinance is being violated, the Selectmen shall take immediate steps to enforce the provisions of same by seeking injunctive relief in the Superior Court or by any other legal and appropriate action.

D. The Selectmen are authorized to institute, in the name of the Town, any legal action by way of injunctive relief or otherwise to enforce this Ordinance or to restrain, prevent or abate any violations thereof, as authorized by RSA 676:15, and shall further be entitled to all of the reimbursement and restitutionary relief and penalties granted to municipalities by RSA 676: 17, and by any other provision of the law.

E. The Board of Selectmen or its appointed representative shall examine every

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application for a floodplain permit and shall ascertain whether the application conforms to the provision of this Ordinance, the Subdivision Regulations and any other applicable Ordinance of the Town of Tamworth.

F. A Floodplain Permit must be applied for and issued by the Board of Selectmen or its appointed representative before any of the following work is undertaken:

1. Any proposed development, regardless of the type or costs, within the floodplain or in a special flood hazard area as defined by this Ordinance.
2. The Board of Selectmen or its appointed representative may, at its discretion, refer an application for a floodplain permit to the Planning Board for review for conformity with the Subdivision Regulations, and any other Ordinance and/or Regulations within the jurisdiction of the Planning Board. In the event of such referral, the Planning Board shall review the application within 30 days and shall make their comments and recommendations in writing.
3. If the Board of Selectmen or its appointed representative finds that any application for a floodplain permit fails to conform with this Ordinance, the Subdivision Regulations, or any other applicable Ordinance and/or Regulation of the Town, they shall deny the floodplain permit, stating, in writing, the reasons for its action.
4. Appeal of denial of a floodplain permit shall be to the Board of Adjustment, as provided by RSA 676:5, and Article VIII of this Ordinance.

ARTICLE VIII - BOARD OF ADJUSTMENT:

A. Term, Membership, Authority and Duties:

1. In conformance with RSA 673:1 IV, the Board of Selectmen shall appoint a Board of Adjustment consisting of five (5) Members and three (3) Alternates, whose qualifications, duties, and organization shall conform to provisions of RSA 673:3 through 673:17.
2. The term of an appointed Board Member shall be three (3) years. The initial terms of Members first appointed to the Board shall be staggered so that no more than two (2) appointments occur annually, except when required to fill vacancies. RSA 673:5.

B. Powers: The Board of Adjustment shall have the powers assigned to it by RSA 674:33 and any other powers assigned to it by Ordinance or by vote of the Town Meeting.

1. Administrative Appeal - The Board shall hear and decide appeals where it is alleged there is an error in any order, requirement, decision or determination made by an Administrative Official of the Town, or by any other Town Board in the Administrative enforcement of this Ordinance. The

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Board of Adjustment may reverse or affirm, wholly or in part, or may modify the order, requirement, decision or determination appealed for, and to that end shall have all the powers of the Official or Board from whom the appeal is taken.

2. Variances - The Board shall hear and decide appeals for variances from the terms of this Ordinance. A variance is a setting aside of certain terms of this Ordinance in a specific case, and shall be granted only for special circumstances under conditions prescribed by law. Variances are further described in Article VI of this Ordinance.

3. Other - the Board of Adjustment shall perform any other duties as prescribed by law.

C. Procedures: The Board of Adjustment procedures shall conform to the provisions of RSA 676.

D. By-laws- The Board of Adjustment shall adopt rules governing its proceedings pursuant to requirements of RSA 676:1.

E Criteria for Granting Variances: The Board of Adjustment may authorize a variance from the terms of this Ordinance in accordance with RSA 674:33. To obtain a variance, the applicant must show the following:

1. No diminution in the value of surrounding properties would be suffered,
2. Granting the floodplain permit will not be contrary to the public interest.
3. Denial of the floodplain permit to the owner seeking it would result in unnecessary hardship due to special conditions.
4. By granting the variance, substantial justice will be done.
5. Granting the variance will not be contrary to the spirit and intent of this Ordinance.
6. The provisions of Article VI B 1-3 of this Ordinance are met.

ARTICLE IX - MISCELLANEOUS PROVISIONS:

A. Nothing contained in this Ordinance shall be construed as repealing or modifying any other Ordinance or Regulation of this Town, except as may be specially repealed or modified by this Ordinance, but shall be in addition thereto. Nor shall anything in this Ordinance be construed as repealing or modifying any private restrictions placed upon property by covenant, deed, or other private agreement, or any restrictive covenants running with the land to which the Town is a party, but shall be in addition thereto.

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B. The more restrictive standard shall apply whenever the provisions of this Ordinance differ from those prescribed by any Statute, regulation or restriction.

C. Separability: If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be unconstitutional or illegal, such invalidity shall not affect the validity of the remaining portion of this Ordinance.

D. Amendments: This Ordinance may be amended by majority vote of any legal Town Meeting, in accordance with the provisions of RSA 675:3, as amended. Amendments shall also be allowed by petitioned warrant article at any regular Town Meeting, under RSA 675:4.

E. Effective Date: This Ordinance shall take effect immediately upon its adoption at Town Meeting.