

Town of Rye
10 Central Road
Rye, NH 03870-0429



FLOODPLAIN DEVELOPMENT AND BUILDING ORDINANCE

- Item I. Definitions of Terms
- Item II. Permit Requirement
- Item III. Building Safety Review
- Item IV. Sanitary Systems Design
- Item V. Proof of Lowest-Elevation Flood proofing
- Item VI. General Permitting
- Item VII. Riverine Alteration
- Item VIII. Determination of 100-Year Flood Elevations
- Item IX. Coastal High Hazard Area Design Requirements
- Item X. Variances and Appeals
- Item XI. Recreational Vehicles

Approved March 8, 1988

Amended December, 14, 2006; March 8, 2005; March 9, 1999; March 12, 1996; March 8, 1994; March 13, 1990;

Revised December 14, 2006; May 17, 2005

Amended: March 13, 2007

Amended: March 11, 2014

FLOODPLAIN DEVELOPMENT & BUILDING ORDINANCE

This ordinance, adopted pursuant to the authority of RSA 674:16, shall be known as the Town of Rye Floodplain Development and Building Ordinance. The regulations in this ordinance shall overlay and supplement the regulations in the Town of Rye 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.

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

Item I. Definitions of Terms

"Area of shallow flooding" means a designated AO zone on a community's Flood Insurance Rate Map (FIRM) with a one percent or greater annual chance of flooding to an average depth of one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

"Area of special flood hazard" is the land in the flood plain within the Town of Rye subject to a one percent or greater chance of flooding in any given year. The area is designated on the FIRM as Zones A, AO, AE, VE or V.

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

"Basement" means any area of the building having its floor subgrade (below ground level) 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.

"Coastal high hazard area" means the area subject to high velocity waters, including but not limited to hurricane wave wash or tsunamis. The area is designated on a FIRM as Zone VE or V.

"Development" means any manmade change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.

“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 sources.

“Flood elevation study” means 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.

“Flood Insurance Rate Map” (FIRM) means an official map of a community on which the FEMA has delineated both the special hazard areas and the risk premium zones applicable to the community.

“Flood Insurance Study” – See “Flood elevation study”.

“Flood plain” or “flood-prone area” means any land area susceptible to being inundated by water from any source (See definition of “flooding”).

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

“Floodway” – See “Regulatory floodway.”

“Functional dependent use” means a use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship 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:

- a) listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
- b) certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;

- c) individually listed on a state inventory of historic places in states which 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.

“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 enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this ordinance.

“Mean sea level” means, for purposes of the National Flood Insurance Program, the National Geodetic Vertical Datum (NGVD) of the 1929 or other datum, to which base flood elevations shown on a community’s Flood Insurance Rate Map are referenced.

“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 flood plain management purposes the term “manufactured home” also includes park trailers, travel trailers and other similar vehicles placed on a site for greater than 180 consecutive days. This includes manufactured home located in a manufactured home park or subdivision. For insurance purposes, the term “manufactured home” does not include park trailers, travel trailers and other similar vehicles.

“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.

“100-year flood” – see “Base flood”.

“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 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. (Adopted 3/8/94)

“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 one foot at any point.

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

“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 improvement, 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 a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the state 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, 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 not 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 exceeds fifty percent of the market value of the structure. The market value of the structure should be 1) the appraised value of the structure 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 the alteration affects the external dimensions of the structure. 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 structure listed on the National Register of Historic Places.

“V Zone” – see “Coastal high hazard area”.

“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 NGVD of 1929 (or other datum, where specified) of floods of various magnitudes and frequencies in the flood plains of coastal or riverine areas.

Item II. Permit Requirements

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

Item III. Building Safety Review

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 in a flood-prone area, all new construction and substantial improvements shall i) be designed (or modified) and adequately anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy, ii) be constructed with materials resistant to flood damage, iii) be constructed by methods and practices that minimize flood damages, and iv) be constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

Item IIIA. (Adopted 3/9/99)

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:

“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.”

Along watercourses that have not had a Regulatory Floodway designated, 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.

Item IV. Sanitary Systems Design

Where new and replacement water and sewer systems (including on-site systems) are proposed in floodprone areas, the applicant shall provide the Building Inspector with the assurance that new and replacement sanitary sewage 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.

Item V. Proof of Lowest-Elevation Floodproofing

For all new or substantially improved structures located in Zones A, AE, or AO, 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 floodproofed, the as-built elevation (in relation to NGVD) to which the structure was floodproofed;
- c) any certification of floodproofing.

For all new construction or substantially improved buildings located in Zone V or VE, the applicant shall furnish the Building Inspector records indicating the as-built elevation of the bottom of the lowest horizontal structural member of the lowest floor (excluding pilings or columns) in relation to NGVD, and whether or not the structure contains a basement.

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

Item VI. General Permitting

The Building Inspector shall not grant a building permit until the applicant certified 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.

Item VII. Riverine Alteration

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.

Within the altered or relocated portion of any watercourse, the applicant shall submit to the Building Inspector certification provided by a registered professional engineer assuring that the flood carrying capacity of the watercourse has been and will be maintained.

Item VIII. Determination of 100-Year Flood Elevations

1. In special flood hazard areas the Building Inspector shall determine the 100-year flood elevation in the following order of precedence according to the data available:
 - a. In Zones AE and VE, refer to the elevation provided in the community's Flood Insurance Study and accompanying FIRM.
 - b. In Zone A, the Building Inspector shall obtain, review and reasonably utilize any 100-year flood elevation data available from development proposals submitted to the community (example, subdivision, site approvals, etc.) or from federal, state or other sources.

- c. In Zone AO, the 100-year flood elevation is determined by adding the elevation of the highest adjacent grade to the depth number specified on the FIRM or if no depth number is specified on the FIRM, at least two feet.
2. The Building Inspector's 100-year flood elevation determination will be used as criteria for requiring in Zones AE, AO and A that:
 - a. all new construction and substantial improvements of residential structures have the lowest floor (including basement) elevated to or above the 100-year flood level;
 - b. that all new construction and substantial improvements of non-residential structures have the lowest floor (including basement) elevated to or above the 100-year flood level; or together with attendant utility and sanitary facilities, shall:
 - i.) be floodproofed so that below the 100-year flood elevation the structure is watertight with walls substantially impermeable to the passage of water;
 - ii.) have structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy; and
 - iii.) 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;
 - c. all 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 level; and be securely anchored to resist flotation, collapses or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top of frame ties to ground anchors. This requirement is in addition to applicable state and local anchoring requirements for resisting wind forces.
 - d. For all new construction and substantial improvements, fully enclosed areas below the lowest floor that are subject to flooding are permitted providing the enclosed areas meet the following requirements: 1) the enclosed area is unfinished or flood resistant, useable solely for parking of vehicles, building access or storage; 2) the area is not a basement; 3) shall be designed to automatically equalize hydrostatic floodwaters. 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 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 floodwaters;
 - e. proposed structures to be located on slopes in Special Flood Hazard Area, Zone AO, shall include adequate drainage paths to guide flood waters around and away from proposed structures.

Item IX. Coastal High Hazard Area Design Requirements

In "Coastal High Hazard Areas", designated on the community's FIRM as Zones VE and V, the following additional requirements shall be met:

1. All new construction or substantial improvements are to be elevated on pilings and columns so that:
 - a. the bottom of the lowest horizontal structural member of the lowest floor (excluding the pilings or columns) is elevated to or above the base flood level; and
 - b. the pile or column foundation and structure attached thereto is anchored to resist flotation, collapse and lateral movement due to the effects of wind and water loads acting simultaneously on all building components. Water loading values used shall be those associated with the base flood. Wind loading values used shall be those required by applicable state and local building standards.
 - c. Any manufactured home to be placed on a site within the VE and V zones must be elevated and anchored or be on the site for less than 180 days and be fully licensed and highway ready. (Adopted 3/12/96).

A registered professional engineer or architect shall develop or review the structural design, specifications and plans for construction, and shall certify that the design and methods of construction to be used are in accordance with accepted standards of practice for meeting the provisions of a) and b) above.

2. The Building Inspector will obtain and maintain records of new construction or substantial improvements indicating the elevation of the bottom of the lowest structural member of the lowest floor (excluding pilings and columns) in relation to mean sea level and whether or not such structures contain a basement.
3. The space below the lowest floor must be either free of obstructions or constructed with non-supporting breakaway walls, open latticework, or insect screening intended to collapse under wind and water loads without causing collapse, displacement or other structural damage to the elevated portion of the building or supporting foundation system. For the purposes of this section, a breakaway wall shall have a design safe loading resistance of not less than 10 and no more than 20 pounds per square foot. Such enclosed space shall be usable solely for parking vehicles, building access, or storage.
4. The use of fill for the structural support of buildings is prohibited.
5. Manmade alterations of sand dunes which would increase potential flood damage is prohibited.
6. All new construction shall be located landward of the mean high tide.

Item X. Variances and Appeals

1. Any order, requirement, decision or determination of the Building Inspector made under this ordinance may be appealed to the Zoning Board of Adjustment as set forth in RSA 676:5.
2. In addition to establishing that the variance requirements of RSA 674:33 are met, the applicant for a variance also has the burden of establishing all of the following: (Revised March 11, 2014)

- a) that the variance will not result in increased flood heights, additional threats to public safety or extraordinary public expense, create nuisances, cause fraud or victimization of the public or conflict with existing town laws or ordinances.
 - b) 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.
 - c) that the variance is the minimum necessary, considering the flood hazard, to afford relief.
 - d) that there is good and sufficient cause for the variance.
 - e) that failure to grant the variance would result in exceptional hardship to the applicant.
 - f) That granting of the variance will not establish a pattern inconsistent with the objectives of sound flood plain management.
3. The Zoning Board of Adjustment shall notify the applicant in writing that: i) 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 ii) such construction below the base flood level increases risks to life and property. Such notification shall be maintained with a record of all variance actions.
 4. The community shall i) maintain a record of all variance actions, including their justification for their issuance, and ii) report such variances issued in its annual or biennial report submitted to FEMA's Federal Insurance Administrator.

Item XI. Recreational Vehicles

Recreational vehicles placed on sites within Zones AE, V, and VE shall either i.) be on the site for fewer than 180 consecutive days, ii.) be fully licensed and ready for highway use, or iii.) meet all standards of Section 60.3 (b)(1) of the National Flood Insurance Program Regulations and the elevation and anchoring requirements of "manufactured homes" in Paragraph (c)(6) of Section 60.3. (Adopted 3/8/94)