

# **Pomfret Flood Hazard Area Regulations**

Adopted by the Selectboard  
May 2, 2007

This bylaw replaces the previous bylaw adopted November 1, 1989.

# POMFRET FLOOD HAZARD AREA REGULATIONS

## **I. Statutory Authorization**

To effect the purposes of 10 V.S.A. Chapter 32, and in accordance with 24 V.S.A. § 4424, there is hereby established an ordinance for areas of special flood hazard in the Town of Pomfret, Vermont.

## **II. Statement of Purpose**

It is the purpose of this ordinance to:

- A. Minimize and prevent the loss of life and property, the disruption of commerce, the impairment of the tax base, and the extraordinary public expenditures and demands on public services that result from flooding and other flood related hazards; and
- B. Ensure that the design and construction of development in flood and other hazard areas are accomplished in a manner that minimizes or eliminates the potential for flood and loss or damage to life and property; and
- C. Manage all flood hazard areas designated pursuant to 10 V.S.A. § 753; and
- D. Make the state, municipalities, and individuals eligible for federal flood insurance and other federal disaster recovery and hazard mitigation funds as may be available.

## **III. Lands to Which These Regulations Apply**

These regulations shall apply to all areas in the Town of Pomfret, Vermont identified as areas of special flood hazard in and on the most current flood insurance studies and maps published by the Department of Homeland Security (DHS), Federal Emergency Management Agency (FEMA), National Flood Insurance Program (NFIP), as provided by the Secretary of the Agency of Natural Resources pursuant to 10 V.S.A. § 753, which are hereby adopted by reference and declared to be part of these regulations.

## **IV. Development Permit Required**

A permit is required, to the extent authorized by State law, for all proposed construction or other development (including mining, dredging, filling, grading, paving, excavation or drilling operations, storage of equipment or materials or the placement of manufactured homes, in areas of special flood hazard.

- A. The following are exempt from regulation under this ordinance:
1. Silvicultural activities not involving the use of buildings and conducted in accordance with Vermont Department of Forest and Parks' Acceptable Management Practices;
  2. Agricultural activities not involving the use of buildings and conducted in accordance with Vermont Department of Agriculture, Food and Markets' Acceptable Agricultural Practices are exempt from this ordinance;
  3. Recreational vehicles outside of the floodway and at least 35 feet from the top of bank, provided they are on the site for fewer than 180 consecutive days or fully licensed and ready for highway use; and
  4. The removal of a structure or building in whole or in part.
- B. The following activities in the area of special flood hazard but outside the floodway only require a development permit from the Zoning Administrator, administered in the same manner as under the town's zoning:
1. Minor improvements to existing structures that do not involve fill and do not decrease structure setbacks from any stream;
  2. At-grade parking areas that meet requirements in Article VII and are at least 50 feet from the top of bank;
  3. Non-enclosed accessory structures such as signs, fences, or pole sheds without walls, foundations or utilities, that meet requirements in Article VII.
- C. Conditional use approval by the Zoning Board of Adjustment, administered in the same manner as under the town's zoning, prior to the issuance of a development permit by the Zoning Administrator, is required for a development not exempted or permitted, including:
1. New buildings,
  2. Substantial improvement of existing buildings,
  3. Any fill or excavation, and
  4. Development in a floodway

All development and subdivisions shall be reviewed to assure that such proposals comply with

the standards in VII; minimize potential flood damage; public facilities and utilities such as sewer, gas, electrical, and water systems are constructed so as to minimize flood damage; and adequate drainage is provided to reduce exposure to flood hazards.

## **V. Procedures**

- A. Prior to issuing a permit, a copy of the application and supporting information shall be submitted by the Zoning Administrator to the State National Floodplain Insurance Program Coordinator at the Vermont Agency of Natural Resources, Department of Environmental Conservation, River Management Section in accordance with 24 V.S.A. § 4424. A permit may be issued only following receipt of comments from the Agency or the expiration of 30 days from the date the application was mailed to the Agency, whichever is sooner.
- B. Adjacent communities and the Stream Alteration Engineer at the Vermont Agency of Natural Resources, Department of Environmental Conservation, River Management Section shall be notified at least 30 days prior to issuing any permit for the alteration or relocation of a watercourse and copies of such notification shall be submitted to the Administrator of the National Flood Insurance Program. Any permit issued shall assure that the flood carrying capacity within the altered or relocated portion of any watercourse is maintained.
- C. Proposed development shall be permitted by the Zoning Administrator conditioned on the receipt of all necessary permits from those government agencies from which approval is required by Federal, State or Municipal law.
- D. All permit, conditional use, hearing, appeal, and filing processes for a permit under this ordinance are the same as for a zoning permit under 24 VSA, chapter 117.

## **VI. Base Flood Elevations and Floodway Limits**

- A. Where available, base flood elevations and floodway limits (or data from which a community can designate regulatory floodway limits) provided by the National Flood Insurance Program in the Flood Insurance Study and accompanying maps shall be used to administer and enforce these regulations.
- B. In areas where base flood elevations and floodway limits have not been provided by the National Flood Insurance Program in the Flood Insurance Study and accompanying maps, base flood elevations and floodway data provided by FEMA or available from State or Federal agencies or other sources, shall be obtained and utilized to administer and enforce these regulations.
- C. Until a regulatory floodway has been designated, no new construction, substantial

improvements, or other development shall be permitted unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing development and anticipated development will not increase the water surface elevation of the base flood at any point within the community.

## **VII. Development Standards**

### A. Floodway Areas

1. Development, except for minor improvements to existing structures or relating to bridges, culverts, roads or stabilization projects, public utilities, or health and safety measures, within the regulatory floodway, as determined by Section VI.B, is prohibited. Such exceptions require conditional use approval prior to permitting and must comply with the standards in VII.B, and demonstrate through hydrologic and hydraulic analyses performed and certified in accordance with standard engineering practice by a registered professional engineer, that the proposed development will result in no increase in flood levels during the occurrence of the base flood.
2. Junkyards and storage facilities for floatable materials, chemicals, explosives, flammable liquids, or other hazardous or toxic materials, are prohibited within the floodway.

### B. Floodway Fringe Areas (i.e., special flood hazard areas outside of the floodway)

1. All Development - All development shall be reasonably safe from flooding and:
  - a) designed (or modified) and adequately anchored to prevent flotation, collapse, or lateral movement of the structure during the occurrence of the base flood,
  - b) constructed with materials resistant to flood damage,
  - c) constructed by methods and practices that minimize flood damage, including the provision of adequate drainage to reduce exposure to flood hazards, and
  - d) 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.
2. Residential Development:
  - a) New construction and existing buildings to be substantially improved that are

located in Zones A, A1-30 and AE shall have the lowest floor, including basement, elevated to at least one foot above the base flood elevation.

- b) Manufactured homes to be placed and existing manufactured homes to be substantially improved that are:
  - i manufactured home park or subdivision, in an expansion to an existing manufactured home park or subdivision, or in a manufactured home park or subdivision which has incurred substantial damage from a flood shall be elevated on a permanent foundation such that the lowest floor of the manufactured home is elevated to at least one foot above the base flood elevation and be securely anchored to an adequately anchored foundation system to resist floatation, collapse, and lateral movement during the occurrence of the base flood.
  - ii. located in an existing manufactured home park, where elevating a replacement home to or above base flood elevation is not possible, the lowest floor shall be supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than 48 inches in height above grade and be securely anchored to an adequately anchored system to resist floatation, collapse, and lateral movement.

3. Non-Residential Development:

- a) New construction located in Zones A, A1-30, and AE shall have the lowest floor, including basement, elevated to at least one foot above the base flood elevation.
- b) Existing buildings to be substantially improved located in Zones A, A1-30, AE shall have the lowest floor, including basement, elevated to at least one foot above the base flood elevation or together with attendant utility and sanitary facilities be designed so that below at least one foot above the base flood elevation the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.
- c) A permit for a building proposed to be floodproofed shall not be issued until a registered professional engineer or architect has reviewed the structural design, specifications and plans, and has certified that the design and proposed methods of construction are in accordance with accepted standards of practice for meeting the provisions of this subsection.

4. Subdivisions:

- a) New subdivision proposals and other proposed development (including proposals for manufactured home parks and subdivisions) that are greater than 50 lots or 5 acres, whichever is the lesser, shall include base flood elevation data.
- b) Subdivisions (including manufactured home parks) shall be designed to assure:
  - i. such proposals minimize flood damage within the flood-prone area,
  - ii. public utilities and facilities, such as sewer, gas, electrical, and water systems are located and constructed to minimize or eliminate flood damage,
  - iii. adequate drainage is provided to reduce exposure to flood hazards, and
  - iv. any access roads to habitable structures or critical facilities shall be at least one foot above base flood elevations and able to withstand a 100-year event without failure or overtopping.

5. Enclosed Areas Below the Lowest Floor:

- a) Enclosed areas below the lowest floor which are subject to flooding shall be used solely for parking of vehicles, building access, or storage and such a condition shall clearly be stated in any permits.
- b) New construction and existing buildings to be substantially improved with fully enclosed areas below the lowest floor that are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters.
- c) Designs for meeting this requirement must either be certified by a registered professional engineer or architect or 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, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

6. Recreational Vehicles: Recreational Vehicles placed on sites with special flood hazard areas shall either:

- a) be on the site for fewer than 180 consecutive days,

- b) be fully licensed and ready for highway use, or
  - c) be permitted in accordance with the elevation and anchoring requirements for “manufactured homes” in section B.2.(b).
7. Accessory Structures: A small accessory building (having a footprint of not more than 576 sq. ft.) that represents a minimal investment need not be elevated to the base flood elevation provided the building:
- a) shall not be used for human habitation and may only be used for parking or storage,
  - b) shall be designed to have low flood damage potential and constructed using flood resistant materials below the Base Flood Elevation,
  - c) shall be constructed and placed on the building site so as to offer the minimum resistance to the flow of floodwaters including any required openings to allow floodwaters in and out,
  - d) shall be firmly anchored to prevent flotation, collapse, and lateral movement, and
  - e) shall have service facilities such as electrical and heating equipment elevated or floodproofed.
8. Water Supply Systems: New and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the systems.
9. Sanitary Sewage Systems: New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters.
10. Watercourse Carrying Capacity: The flood and sediment carrying capacity within any altered or relocated portion of a watercourse shall be maintained.
11. Access Roads: Any access roads to habitable structures or critical facilities shall be at least one foot above base flood elevations and able to withstand a 100-year event without failing.
12. On-site waste disposal: Systems shall be located to avoid impairment to them or contamination from them during flooding.

## **VIII. Duties and Responsibilities of the Zoning Administrator**

- A. The Zoning Administrator shall maintain a record of:
1. All permits issued and denied for development in areas of special flood hazard;
  2. The elevation (consistent with the datum of the elevation on the NFIP maps for the community) of the lowest floor, including basement, of all new or substantially improved buildings;
  3. The elevation (consistent with the datum of the elevation on the NFIP maps for the community) to which buildings have been floodproofed;
  4. All floodproofing certifications required under this regulation; and
  5. All variance actions, including justification for their issuance.

## **IX. Variances to the Development Standards**

Variances shall be granted by the Zoning Board of Adjustment after a hearing noticed in the same manner as for a conditional use and only in accordance with 24 V.S.A. § 4469 and in accordance with the criteria for granting variances found in 44 CFR, Section 60.6, of the National Flood Insurance Program regulations, which requires that the variance will not result in increased flood heights, increased susceptibility to flooding or erosion, additional threats to public safety or infrastructure (including emergency services during flood events), or extraordinary public expense.

## **X. Warning of Disclaimer of Liability**

This ordinance does not imply that land outside of the areas of special flood hazard or land use permitted within such districts will be free from flooding or flood damages. This ordinance shall not create liability on the part of the Town of Pomfret or any town official or employee thereof for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made thereunder.

## **XI. Validity and Severability**

If any portion of this ordinance is held unconstitutional or invalid by a competent court, the remainder of this ordinance shall not be affected.

## **XII. Precedence of Ordinance**

The provisions of this ordinance shall not in any way impair or remove the necessity of compliance with any other applicable ordinances. Where this ordinance imposes a greater restriction, the provisions of this ordinance shall take precedence.

## **XIII. Enforcement and Penalties**

It shall be the duty of the Zoning Administrator to enforce the provisions of this ordinance. Whenever any development occurs contrary to these flood hazard area regulations, the Zoning Administrator shall notify the alleged offender of the violation by certified mail to correct the violation. No action may be brought unless the alleged offender has had at least a seven-day warning notice by certified mail. An action may be brought without the seven-day notice and opportunity to cure if the alleged offender repeats the violation after the seven-day notice period and within the next succeeding twelve months. The seven-day warning notice shall state that a violation exists, that the alleged offender has an opportunity to cure the violation within the seven days, that failure to cure may result in loss of flood insurance, and that the alleged offender will not be entitled to an additional warning notice for a violation occurring after the seven days and within the next succeeding 12 months.

If the violation is not remedied within 7 days, or appealed, the Zoning Administrator shall file a copy of the notice of alleged violation in the municipal land use permit files, with the Town Clerk for filing in the land records, and shall also mail a copy to the alleged violator, the state NFIP Coordinator and the Administrator of the National Flood Insurance Program. Section 1316 of the National Flood Insurance Act of 1968, as amended, authorizes FEMA to deny flood insurance to a property declared by a community to be in violation of their flood hazard area regulations. The notice shall consist of: (a) the name of the property owner and address or legal description of the property sufficient to confirm its identity or location, (b) a clear and unequivocal declaration that the property is in violation of a cited State or local law, regulation, or ordinance, (c) a clear statement that the public body making the declaration has authority to do so and a citation to that authority, (d) evidence that the property owner has been provided notice of the violation and the prospective denial of insurance, and (e) a clear statement that the declaration is being submitted pursuant to Section 1316 of the National Flood Insurance Act of 1968, as amended.

## **XIV. Definitions**

***Appropriate Municipal Panel*** means a planning commission performing development review, a board of adjustment, a development review board, or a legislative body performing development review.

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

**Base Flood Elevation (BFE)** the height of the base flood, usually in feet, in relation to the National Geodetic Vertical Datum of 1929, the North American Vertical Datum of 1988, or other datum referenced in the Flood Insurance Study report, or average depth of the base flood, usually in feet, above the ground surface.

**Basement** means any area of the building having its floor elevation (below ground level) on all sides.

**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 operations or storage of equipment or materials.

**Existing manufactured home park or subdivision** means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of the floodplain management regulations adopted by a community.

**Expansion to an existing manufactured home park or subdivision** means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufacturing homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

**Fill** means the placement of 10 or more cubic yards of material.

**Flood** means (a) A general and temporary condition of partial or complete inundation of normally dry land areas from: the overflow of inland or tidal waters; the unusual and rapid accumulation or runoff of surface waters from any source; and mudslides 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. (b) The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as flash flood or abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding.

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

**Flood Insurance 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.

***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 which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

***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.

***Historic Structure*** means any structure that is: (a) 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; (b) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district; (c) Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or (d) Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either: (i) By an approved state program as determined by the Secretary of the Interior or (ii) Directly by the Secretary of the Interior in states without approved programs.

***Legislative Body*** means the selectboard in the case of a town, the trustees in the case of an incorporated village, and the mayor, alderpersons, and city council members in the case of a city, and the supervisor in the case of an unorganized town or gore.

***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 44 CFR 60.3.

***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 attached to the required utilities. The term “manufactured home” does not include a “recreational vehicle”.

***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.

**Minor Improvement** means an improvement to a structure in the area of special flood hazard where the value of the improvement is less than 50% of the structure's value.

**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 the floodplain management regulation adopted by a community and includes any subsequent improvements to such structures.

**New manufactured home park or subdivision** means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of the floodplain management regulations adopted by a community.

**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 a temporary living quarters for recreational, camping, travel, or seasonal use.

**Special Flood Hazard Area** is the land in the floodplain within a community subject to a 1 percent or greater chance of flooding in any given year. The area may be designated a Zone A on the Flood Hazard Boundary Map (FHBM). After detailed ratemaking has been completed in preparation for publication of the Flood Insurance Rate Map (FIRM), Zone A usually is refined into Zones A, AO, AH, A1-30, AE, A99, AR, AR/A1-30, AR/AE, AR/AO, AR/AH, AR/A, VO or V1-30, VE, or V. For purposes of these regulations, the term "special flood hazard area" is synonymous in meaning with the phrase "area of special flood hazard".

**Start of Construction** includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition 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 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, footing, 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 not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a

building, regardless whether that alteration affects the external dimensions of the building.

**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.

**Structure**, for insurance purposes, means: (a) A building with two or more outside rigid walls and a fully secured roof, that is affixed to a permanent site; (b) A manufactured home (“a manufactured home,” also known as a mobile home, is a structure: built on a permanent chassis, transported to its site in one or more sections, and affixed to a permanent foundation); or (c) A travel trailer without wheels, built on a chassis and affixed to a permanent foundation, that is regulated under the community’s floodplain management and building ordinances or laws. For the latter purpose, “structure” does not mean a recreational vehicle or a park trailer or other similar vehicle, except as described in (c) of this definition, or a gas or liquid storage tank.

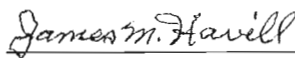
**Substantial damage** means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged conditions would equal or exceed 50 percent of the market value of the structure before the damage occurred.

**Substantial improvement** means any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which cumulatively equals or exceeds 50 percent of the market value of the structure before the “start of construction” of the improvement. This term includes structures which have incurred “substantial damage”, regardless of the actual repair work performed. The term does not, however, include either: (a) Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specification which have been identified by the local code enforcement official and which are the minimum 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”.

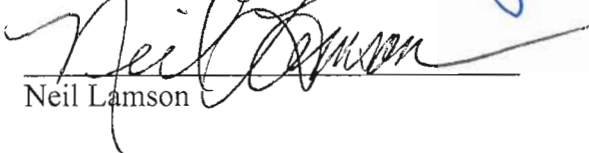
**Violation** means the failure of a structure or other development to be fully compliant with the community’s floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in 44 CFR 60.3 is presumed to be in violation until such time as that documentation is provided.

Adopted May 2, 2007

POMFRET Board of Selectmen

  
James M. Havill, Chair

  
Robert S. Harrington

  
Neil Lamson