

**TOWN OF FAIRLEE**

**FLOOD HAZARD AREA ZONING BYLAW**

**1.0 STATUTORY AUTHORIZATION**

1.1 To effect the purposes of 10 V.S.A., Chapter 32, and in accord with the Vermont Planning and Development Act, 24 V.S.A., Chapter 117, Section 4412, there are hereby established zoning regulations for areas of special flood hazard in the Town of Fairlee, Vermont.

**2.0 STATEMENT OF PURPOSE**

2.1 It is the purpose of these regulations to promote the public health, safety, and general welfare, to prevent increases in flooding caused by the uncontrolled development of lands in areas of special flood hazard, and to minimize losses due to floods by:

- a. restricting or prohibiting uses that are dangerous to health, safety, or property in times of flood or cause excessive increase in flood heights or velocities;
- b. requiring that uses vulnerable to floods, including public facilities that serve such uses, shall be protected against flood damage at the time of initial construction; and
- c. protecting individuals from buying lands that are unsuited for their intended purposes because of flood hazard.

**3.0 LANDS TO WHICH THESE REGULATIONS APPLY**

3.1 These regulations shall apply to all lands in the Town of Fairlee, Vermont.

- a. within areas designated as special flood hazard areas on the Town's Official Flood Hazard Area Map.

**4.0 OFFICIAL FLOOD HAZARD AREA MAP**

4.1 The map entitled Flood Insurance Rate Map (FIRM), Town of Fairlee, Vermont and any revisions thereto, shall be considered the Official Flood Hazard Area Map, together with all explanatory matter thereon and attached thereto, and is hereby adopted by reference and declared to be part of these regulations.

**5.0 INTERPRETATION OF DISTRICT BOUNDARIES**

5.1 The Administrative Officer shall determine the boundaries of any designated area of special flood hazard by scaling distances of the Official Flood Hazard Area Map. Appeals with respect to a boundary interpretation shall be made by filing a notice with the secretary of the Board of Adjustment within fifteen days of the decision or act.

**6.0 PERMIT REQUIREMENTS AND APPLICATION PROCEDURES**

6.1 Permits are required for all proposed new construction, substantial improvements, and other developments, including the placement of manufactured homes, within all lands to which these regulations apply.

6.2 All zoning permit applications shall be submitted to the Administrative Officer, on forms furnished by him, who shall determine, on application, whether or not the proposed development is located within the area of special flood hazard by the procedures established in Section 5.0 of these regulations.

6.3 If the proposed use will be located in the areas of special flood hazard, the Administrative Officer shall refer all applicants to the secretary of the Board of Adjustment.

**7.0 RECORDS**

7.1 The Administrative Officer shall maintain a record of:

- a. the elevation, in relation to mean sea level, of the lowest habitable floor, including basement, of all new construction or substantial improvement of structures, within the designated special flood hazard areas, and whether or not such structures contain a basement; and
- b. the elevation, in relation to mean sea level, to which such structures have been floodproofed.
- c. all floodproofing certifications required under this regulation.
- d. all variance actions, including justification for their issuance.

**8.0 BOARD OF ADJUSTMENT**

8.1 Upon receiving an application for a permit under these regulations, the Board of Adjustment shall, prior to holding a hearing and rendering a decision thereon, obtain from the applicant:

- a. base flood elevation data for all subdivisions and other proposed new developments;
  - b. the elevation, in relation to mean sea level, of the lowest habitable floor, including basement, of all new construction or substantial improvement of structures;
  - c. where floodproofing is used in lieu of elevation, the elevation, in regulation to mean sea level, to which any structure or substantial improvement has been floodproofed;
  - d. certification from a registered professional engineer or architect that the floodproofed structure meets the floodproofing criteria of subsection 9.1 (B) 11 of these regulations; and
  - e. a description of the extent to which any watercourse will be altered or relocated as a result of the proposed development.
- 8.2 Where available; i.e., Zones A1-A30, AE, and AH; the base flood elevations and floodway limits provided by the National Flood Insurance Program in the Flood Insurance Study and accompanying maps shall be used to administer the provisions of these regulations.
- 8.3 In areas where base flood elevations and floodway limits have not been provided, the Board of Adjustment shall obtain, review and reasonably utilize any base flood elevation and floodway data available from a federal, state or other source, as criteria for approval of all development.
- 8.4 The Board of Adjustment shall notify adjacent communities and the Vermont Department of Environmental Conservation prior to approval of any alteration or relocation of a watercourse and shall submit copies of such notifications to the FEMA Administrator.

**9.0 DEVELOPMENT STANDARDS**

- 9.1 As a condition of approval, the Board of Adjustment shall specifically require the following:
- A. Floodway Areas
    - 1. Development within the floodway is prohibited unless a registered professional engineer certifies that the proposed development will not result in any increase in flood levels during the occurrence of the base flood.
    - 2. No new construction, substantial improvement, or other development (including fill) shall be permitted within zones A1-30 and AE on the town's FIRM, unless it is demonstrated that the cumulative effect of the proposed

development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the town. This provision applies until a regulatory floodway is designated.

3. Junkyards and storage areas or facilities for floatable materials, chemicals, explosives, flammable liquids or other hazardous or toxic materials are prohibited within the floodway.

B. Fringe Areas

1. All structures shall be designed (i) to minimize flood damage to the proposed development and to public facilities and utilities, and (ii) to provide adequate drainage to reduce exposure to flood hazards.
2. Structures be: (i) designed (or modified) and anchored to resist flotation, collapse, or lateral movement; (ii) be constructed with materials resistant to flood damage; (iii) be constructed by methods and practices that minimize flood damage; (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.
3. The flood carrying capacity within any altered or relocated portion of a watercourse shall be maintained.
4. New and replacement water supply and 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.
5. Onsite waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.
6. New and replacement manufactured homes shall be elevated on properly compacted fill such that the top of the fill (the pad) under the entire manufactured home is above the base flood elevation.
7. All subdivision proposals be reasonably safe from flooding and that:
  - a. all public utilities and facilities serving subdivisions, such as sewer, gas, electrical, and water systems, be located and constructed to minimize or eliminate flood damage; and
  - b. adequate drainage be provided within subdivisions to reduce exposure to flood hazards.
8. The lowest floor, including basement, of all new buildings shall be at or above base flood elevation.

9. Existing buildings to be substantially improved for residential purposes shall be modified or elevated to meet the requirements of subsection 8.
  10. Existing buildings to be substantially improved for non-residential purposes shall either (1) meet the requirements of subsection 9, or (2) be designed to be watertight below the base flood elevation with walls substantially impermeable and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy. 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.
  11. All new construction and substantial improvements 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. 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.
  12. Areas to be used for junkyards or for storage of floatable, hazardous or toxic materials shall be filled and graded to at least one foot above the base flood elevation.
- 9.2 The Board of Adjustment shall attach such additional conditions to the granting of a permit as are necessary to meet the purposes and flood hazard area management requirements of these zoning regulations.

## **10.0 VARIANCES TO THE DEVELOPMENT STANDARDS**

- 10.1 Variances shall be granted by the Board of Adjustment only:
1. in accordance with the provisions of 24 V.S.A., Section 4468 and Section 4412(h) and in accordance with the criteria for granting variances found in 44 CFR, Section 60.6, of the National Flood Insurance Program regulations;
  2. upon determination that during the base flood discharge the variance will not result in increased flood levels; and

3. upon determination that the structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.

#### **11.0 TIME FOR ACTING ON APPLICATION**

- 11.1 The Board of Adjustment shall hold a properly warned hearing within 30 days of receiving an application, and shall act on such application in a manner described in Section 9.0 above, within 30 days of the final hearing.
- 11.2 A copy of the public notice shall be mailed to the applicant at least 15 days prior to the hearing date.

#### **12.0 ISSUANCE AND TRANSMISSION OF PERMITS**

- 12.1 Upon granting a permit, the Board of Adjustment shall send to the applicant, by certified mail, a copy of the decision. Copies of the decision also shall be mailed to every person appearing and having been heard at the hearing, with the Administrative Officer, who shall forthwith issue a permit, and with the Town Clerk as a part of the public records.

#### **13.0 EFFECTIVE DATE**

- 13.1 Permit shall take effect 15 days from the date of issuance.

#### **14.0 APPEALS**

- 14.1 An interested person, as defined in 24 V.S.A., Section 4464(b), may appeal a decision of the Board of Adjustment to the superior court in accordance with the provisions of 24 V.S.A., Section 4471.

#### **15.0 NONCONFORMING STRUCTURES**

- 15.1 The Board of Adjustment may, after public notice and hearing, approve the repair, relocation, replacement, or enlargement of a nonconforming structure within a regulated flood hazard area, subject to compliance with the applicable considerations and requirements of Section 9.0 of these regulations and provided that the following criteria are met:
  - a. the Board finds that the repair, relocation, or enlargement of such nonconforming structure is required for the continued economically feasible operation of a non-residential enterprise;

- b. the Board finds that the repair, relocation, or enlargement of a nonconforming residential or non-residential structure will not increase flood levels in the regulatory floodway, threaten the health, safety, and welfare of the public or other property owners;
- c. the permit so granted shall state that the repaired, relocated, or enlarged nonconforming structure is located in a regulated flood hazard area does not conform to the regulations pertaining thereto, may not be eligible for any flood insurance pertaining to regulated flood hazard areas, and will be maintained at the risk of the owner; and
- d. a copy of such permit shall be affixed to the copy of the deed of the concerned property on file in the Town Clerk's office.

## **16.0 PROHIBITED USES**

- 16.1 Junkyards, as defined in 24 V.S.A., Section 2068, and storage facilities for chemicals, explosives, flammable liquids or other toxic materials shall be prohibited in the floodway.

## **17.0 FEES**

- 17.1 The Board of Selectmen shall establish such fees as may be necessary for the filing of notices and the processing of hearings and action thereon. All such fees shall be paid to the secretary of the Board of Adjustment upon application for a conditional use permit under these regulations.

## **18.0 WARNING OF DISCLAIMER OF LIABILITY**

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

## **19.0 SEVERABILITY**

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

**20.0 PRECEDENCE OF REGULATIONS**

20.1 The provisions of these regulations shall be appended to the existing Fairlee Zoning Bylaw and if there is a conflict in the regulations the more stringent will supersede.

**21.0 ANNUAL REPORT TO FEDERAL EMERGENCY MANAGEMENT AGENCY**

21.1 The Administrative Officer shall submit to the Administrator an Annual Report with respect to the administration and enforcement of these regulations.

21.2 A copy of the Annual Report shall be submitted to the Vermont Department of Environmental Conservation.



## 22.0 DEFINITIONS

Administrator: The Federal Insurance Administrator.

Administrative Officer: The Town Zoning Administrator of the Town of Fairlee.

Alluvial Fan Flooding: means flooding occurring on the surface of an alluvial fan or similar landform which originates at the apex and is characterized by high velocity flows; active processes of erosion, sediment transport, and deposition; and, unpredictable flow paths.

Apex: means a point on an alluvial fan or similar landform below which the flow path of the major stream that formed the fan becomes unpredictable and alluvial fan flooding can occur.

Area of Shallow Flooding: means a designated AO or AH zone on a Town's Flood Insurance Rate Map (FIRM) with a one percent or greater 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: The land in the floodplain within a Town subject to a one percent or greater chance of flooding in a given year.

Base Flood: 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 subgraded (below ground level) on all sides.

Building: means a walled and roofed building including a gas or liquid storage tank that is stored above ground.

Development: The division of a parcel into two or more parcels, the construction, reconstruction, conversion, structural alteration, relocation or enlargement of any building or other structure, or of any mining, excavation of landfill, and any change in the use of any building or other structure, or land or extension or use of land.

FEMA: Federal Emergency Management Agency.

FHBM: The Flood Hazard Boundary Map means an official map of the Town, issued by the FEMA, where the boundaries of the flood, mudslide (i.e., mudflow) related to erosion areas having special hazards have been designated as zones A, M and/or E.

FIRM: The Flood Insurance Rate Map, an official map of a community, on which the Administrator has delineated both the areas of special flood hazard 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.

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 a designated height.

Floodproofing: Any combination of structural and nonstructural 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.

Fringe Area: As defined by the attached floodway schematic (see Section 23.0 Appendix).

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 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 Interior; 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 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 Section 60.3.

Manufactured Home: A structure, transportable in one or more sections, which is built on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities. It does not include recreational vehicles or travel trailers.

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

Mean Sea Level: means, for purposes of the National Flood Insurance Program, the National Geodetic Vertical Datum (NGVD) of 1929 or other datum, to which base flood elevations shown on a Town's 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.

Structure: An assembly of materials for occupancy or use, including, but not limited to, a building, mobile home or trailer, billboard, sign, wall or fence, except a wall or fence on an operating farm.

Start of Construction: See FEMA definition in Section 1909.1 of the current National Flood Insurance Program rules and regulations.

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.

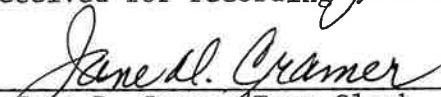
Substantial Improvement: Any repair, reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the "start of construction" of the improvement. This term includes structures which have incurred "substantial damage", regardless of the actual repair work performed. The term does not, however, include either (1) any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions or (2) any alteration of a "historic structure", provided that the alteration will not preclude the structure's continued designation as a "historic structure".

The Foregoing Flood Hazard Area Zoning Bylaws for the Town of Fairlee, Vermont were ratified by the Fairlee Board of Selectmen at their meeting on June 17, 1991.

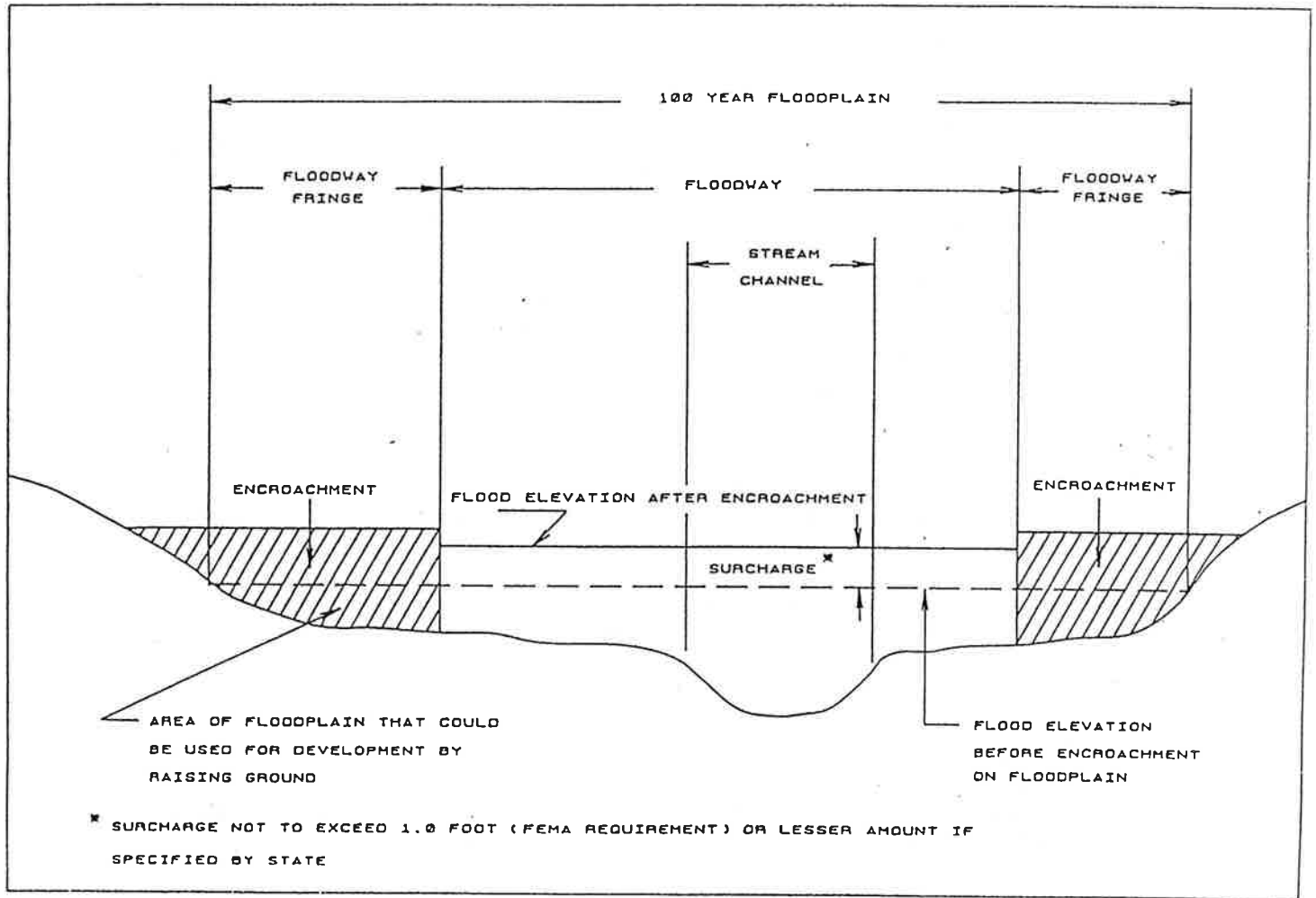
  
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John E. Stewart/Chairman

June 17, 1991

Received for recording *June 18, 1991* Fairlee Town Clerk's Office

  
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Jane D. Cramer/Town Clerk

23.0 APPENDIX



FLOODWAY SCHEMATIC