

Town of Warner
Flood Damage Prevention Ordinance

ARTICLE I - ESTABLISHMENT

The Town of Warner, New Hampshire elects to comply with the requirements of the National Flood Insurance Act of 1968 (P.L. 90-488 as amended). The National Flood Insurance Program, established in the aforesaid Act, provides that areas of the Town having a special flood hazard be identified by the Federal Emergency Management and that flood plain management measures be applied in such flood hazard areas. This Ordinance establishes a Flood Hazard Permit System and review procedure for development activities in the designated flood hazard areas of the Town of Warner, New Hampshire.

The areas of special flood hazard identified by the Federal Emergency Management Agency in a report entitled "Flood Insurance Study-Town of Warner in the County of Merrimack" with accompanying "Flood Insurance Rate Map", and "Flood Boundary and Floodway Map", dated January 27, 1986 is hereby adopted by reference and declared to be part of this Ordinance.

ARTICLE II - FINDINGS OF FACT AND PURPOSE

A. Flood Losses Resulting From Periodic Inundation.

The flood hazard areas of Warner, NH are subject to periodic inundation which can result in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief and impairment of the tax base. All of which adversely affect the public health, safety and general welfare.

B. General Causes of Flood Losses

These losses are caused by: (1) the cumulative effect of obstructions in the floodplains, causing increased flood heights and velocities; (2) the occupancy of flood hazard areas by uses vulnerable to floods or hazardous others, which are inadequately elevated or otherwise protected from flood damages.

C. It is the purpose of this Ordinance to promote the public health, safety and general welfare, and to minimize losses by provisions designed to:

1. Restrict or prohibit uses which are dangerous to health, safety or property in times of flood or cause excessive increases in flood heights or velocities.

2. Require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of the initial construction.

3. Protect individuals from knowingly buying lands which are unsuited for intended purposes because of flood hazard.

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ARTICLE III - GENERAL PROVISIONS

A. This Ordinance shall apply to those lands within the jurisdiction of Warner shown on the Floodplain map.

B. The boundaries of the General Floodplain District shall be determined by scaling where interpretation is needed as to the exact location of the boundaries of the district as shown on the Floodplain Map (for example, where there appears to be a conflict between a mapped boundary and actual field conditions), the Board of Adjustment shall make the necessary interpretation.

The person contending the location of the district boundary shall be given a reasonable opportunity to present his case to the Board and to submit his own technical evidence if he so desires.

ARTICLE IV - DEFINITIONS

A. Unless specifically defined below, words or phrases used in this Ordinance shall be interpreted so as to give them the meaning they have in common usage and to give the Ordinance its most reasonable application.

1. "Area of Special Flood Hazard" - means the land in the floodplain having a one percent or greater chance of flooding in any given year, as specifically identified in the flood insurance studies cited.

2. "Base Flood" - means the flood having a one percent chance of being equalled or exceeded in any given year.

3. "Equal degree of Encroachment" - a standard applied in determining the location of encroachment limits so that floodplain lands on both sides of the river/stream are capable of conveying a proportionate share of flood flows. This is determined by considering the effect of encroachment on the hydraulic efficiency of the floodplain along both sides of a river/stream for a significant reach.

4. "Flood" - a temporary rise in stream level that results in inundation of areas not ordinarily covered by water.

5. "Floodplain" - an area of land that would be covered with water during a flood. In connection with the Flood Insurance Program, the term usually refers to the 100 year floodplain.

6. "Floodway" - THE CHANNEL OF A RIVER OR OTHER WATERCOURSE AND THE ADJACENT LAND AREAS THAT MUST BE RESERVED IN ORDER TO DISCHARGE THE BASE FLOOD WITHOUT CUMULATIVELY INCREASING THE SURFACE ELEVATION MORE THAN A DESIGNATED HEIGHT AS SHOWN ON THE OFFICIAL MAPS.

7. "Flood Insurance Rate Map" - means the official map on which FEMA has delineated both the areas of special flood hazards and the risk premium zones applicable to the Town of Warner.

8. "Structure" - anything constructed or erected, on the ground, or attached to the ground, including but without limitation to buildings, factories, sheds, cabins, mobile homes and similar uses.

Also meaning a walled or roofed building, including storage tanks and mobile homes, that is principally above ground.

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9. "Accessory Use or Structure" - a use of a structure on the same lot with, and of, a nature customarily incidental and subordinate to a principal use of a structure.

10. "Obstruction" - any dam, wall, wharf, embankment, levee, dike, pile, abutment, projection, excavation, channel, rectification, bridge, conduit, culvert, building, wire, fence, rock, gravel, refuse, fill, structure or matter in, along or across or projecting into any channel, watercourse, or regulatory flood hazard area which may impede, retard or change the direction of the flow of water, whether in itself or by catching or collecting debris carried by such water, or that is placed where the flow of water might carry the same downstream to the damage of life or property.

11. "Development" - any man made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations.

12. "Substantial Improvement" - any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds 50% of the market value of the structure either before the improvement is started or, if the structure has been damaged and is being restored, before the damage occurred. For purposes of this definition, "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor, or structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. The term does not, however, include any project for improvement of a structure to comply with existing state and local health, sanitary or safety code specifications which are solely necessary to assure safe living conditions or for any alteration of a structure listed on the National Register of Historic Places or a State Inventory of Historic Places.

ARTICLE V - DEVELOPMENT STANDARDS

A. In areas of Special Flood Hazard all development shall meet the following applicable standards:

1. All development shall be constructed and maintained in such a manner that no reduction occurs in the flood carrying capacity of any water course.

2. New structures, relocation or substantial improvement of existing residential structures shall be allowed, provided that the lowest floor (including basement) shall be elevated to or above base flood elevation. Mobile homes and modular homes shall be allowed, provided that the pad is elevated on fill so that the pad itself is at or above the 100 year elevation, and provided further that adequate surface drainage and access for a hauler are provided.

Non-residential structures shall be elevated to or above base flood elevation or flood proofed so that the design of that portion of the building that is below base flood level shall be certified by a registered engineer to be watertight with wall substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.

3. In order to minimize flood damage, construction methods and practices shall meet the following standards:

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a. structures shall be designed or modified and anchored to prevent flotation, collapse or lateral movement of the structure.

b. all new and replacement water supply systems, on-site waste disposal systems, and new and replacement sanitary sewage systems shall be designed and located to minimize or eliminate infiltration of flood waters into the system, and to avoid impairment of these systems.

c. construction material and utility equipment shall be resistant to flood damage.

d. electrical, gas and other utilities shall be located and constructed to minimize flood damage.

B. IN THE FLOODWAY, ANY ENCROACHMENT WHICH WOULD CAUSE ANY INCREASE IN THE 100 YEAR FLOOD LEVEL IS PROHIBITED.

ARTICLE VI - NON-CONFORMING USES

A. A structure or the use of a structure on premises which was lawful before the passage or amendment of the Ordinance but which is not in conformity with the provisions of this Ordinance may be continued.

B. No such use shall be expanded, changed, enlarged, or altered without a permit from the Building Inspector.

C. No such use shall be expanded, changed, enlarged or altered in a way which increases its non-conformity.

D. No structural alteration, addition, or repair to any non-conforming structure shall exceed 25% of its replacement value at the time of the alteration, addition or repairs.

E. If such use is discontinued for 12 consecutive months, any future use of the building premises shall conform to this Ordinance.

F. If any non-conforming use or structure is destroyed by any means, including flood(s), to an extent of 75% or more of its value, it shall not be reconstructed except in the conformity with the provisions of this Ordinance.

ARTICLE VII - NON-PERMITTED USES

A. WITHIN THE FLOODWAY, ANY DEVELOPMENT OR ENCROACHMENT WHICH COULD RESULT IN ANY INCREASE IN FLOOD LEVELS IS PROHIBITED.

ARTICLE IX - APPLICATION FOR PERMIT

The application for a Flood Hazard Development Permit shall be submitted to the Code Enforcement Officer/Building Inspector who may grant the permit or determine that further consideration is necessary by the Zoning Board of Adjustment, and shall include:

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- A. The name and address of the applicant.
- B. An address or a map indicating the location of the construction site.
- C. A site plan showing location of existing and proposed structure(s), sewage disposal facilities, water supply facilities, areas to be cut and filled, and the dimensions of the lot.
- D. A statement of the intended use of the structure(s).
- E. A statement as to the type of sewage system proposed.
- F. Specification of dimensions of the proposed structure(s).
- G. The elevation (in relation to mean sea level) of the lowest floor, including basement, and if the lowest floor is below grade on one or more sides, the elevation of the floor immediately above.
- H. Base flood elevation data for all new, relocated or substantially improved structures.
- I. The elevation (in relation to mean sea level) to which the structure will be floodproofed.
- J. The description of the extent to which any water course will be altered or relocated as a result of the proposed development.

ARTICLE X - PERMIT FEE

Permit fees shall be set by the Code Enforcement Officer and/or the Board of Adjustment and will depend on the needs required of the assistance of a professional Engineer.

ARTICLE XI - REVIEW OF SUBDIVISION PROPOSALS

The Planning Board shall, when reviewing subdivisions under any locally adopted additional subdivision regulations, or local shoreland and townwide zoning, assure that:

- A. All such proposals are consistent with the need to minimize flood damage.
- B. All public utilities and facilities, such as sewer, gas, electrical and water systems are located, elevated and constructed in accordance with the standards of this Ordinance.
- C. Base flood elevation shall be provided by the developer.

ARTICLE XII - APPEALS AND VARIANCES

The Board of Adjustment of the Town of Warner, may, upon written application of an aggrieved party, hear and decide upon appeals from determinations of the Code Enforcement Officer/Building Inspector in the administration of the provisions of this Ordinance.

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The Board of Adjustment may interpret the provisions of this Ordinance which are called into question, and it may grant a variance in accordance with state law and the following criteria:

A. Variances shall be granted only upon:

1. a showing of good and sufficient cause;
2. a determination that failure to grant the variance would result in undue hardship to the applicant; and
3. a determination made by the Board with the assistance of registered professional engineer, if need be, that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, nuisances, fraud or victimization of the public, or conflicts with existing local ordinances.

B. Variances shall be issued only upon determination that the variance is the minimum necessary, considering the flood hazard, to afford relief. In making its determination, the Board shall consider:

1. the danger to life and property due to increased flood heights or velocities caused by encroachment;
2. the danger that materials may be swept onto other lands or downstream to the injury of others;
3. the proposed water supply and sanitary systems and the ability of these systems to prevent disease, contamination, and unsanitary conditions;
4. the susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owners;
5. the importance of the services provided by the proposed facility to the community;
6. the requirement of the facility for a waterfront location;
7. the availability of alternate locations not subject to flooding for the proposed use;
8. the compatibility of the proposed use with existing development anticipated in the foreseeable future;
9. the relationship of the proposed use to the comprehensive plan and floodplain management program for the area;
10. the safety of access to the property in time of flood of ordinary and emergency vehicles;
11. the expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters expected at the site; and
12. such other factors which are relevant to the purposes of this Ordinance.

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

1. the issuance of a variance to construct a structure below the base flood level will result in greatly increased premium rates for flood insurance; and

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

D. The Board of adjustment shall submit to the Code Enforcement Officer/Building Inspector a report of all variance actions, including justification for the granting of the variance and an authorization for the Code Enforcement Officer/Building Inspector to issue a Flood Hazard Development Permit, which includes any conditions to be attached to said permit.

ARTICLE XIII - ENFORCEMENT

It shall be the duty of the Code Enforcement Officer/Building Inspector to enforce the provisions of this Ordinance. If the Code Enforcement Officer/Building Inspector finds that any provision of this Ordinance is being violated, he shall notify, in writing, the person(s) responsible for such violation indicating the nature of the violation and ordering the action necessary to correct it.

When the above action does not result in the correction of abatement of the violation, the Municipal Officers, upon notice from the Board of Adjustment, Code Enforcement Officer/Building Inspector, are hereby authorized and directed to institute any and all actions, whether legal or equitable, necessary to the enforcement of this Ordinance. Any person who continues to violate any provision of this Ordinance after receiving notice of such violation shall be guilty of a misdemeanor subject to a fine of \$100.00 for each violation. Each day such violation is continued is a separate offense.

ARTICLE XIV - VALIDITY AND SEVERABILITY

If any section of this Ordinance is declared by the courts to be invalid, such decision shall not invalidate any other section of the provision of this Ordinance.

ARTICLE XV - CONFLICT WITH OTHER ORDINANCES

This Ordinance shall not repeal, annul or in any way impair or remove the necessity of compliance with any other rules, regulations, by-law, permit or provision of law. Where one ordinance imposes a greater restriction upon the use of the land, buildings or structures than another ordinance, the provisions of the stricter shall control.

ARTICLE XVI - EFFECTIVE DATE

The effective date of this Ordinance is: *March 10, 1987*