

TOWN OF WILMINGTON FLOOD AND FLUVIAL EROSION HAZARD REGULATIONS

Contents

600. Statutory Authorization and Effect	1
601. Statement of Purpose	1
602. Other Provisions	1
603. Lands to Which these Regulations Apply	2
604. Administration	4
605. Permit Application Guidelines	10
606. Development in Regulated Flood Hazard Areas.....	13
607. Technical Provisions	15
608. Enforcement and Penalties	21
609. Waivers.....	23
610. Variances.....	24
611. Definitions	26

600. Statutory Authorization and Effect

In accordance with 10 V.S.A. Chapter 32, and 24 V.S.A. Chapter 117 § 4411, § 4412, § 4414, § 4424, and 24 V.S.A. Chapter 59, there is hereby established a bylaw for areas at risk of flood damage in the Town of Wilmington, Vermont. Except as additionally described below, all administrative procedures follow town procedures under 24 V.S.A. Chapter 117.

601. Statement of Purpose

It is the purpose of this bylaw to:

1. Implement the goals, policies, and recommendations in the current town plan;
2. Avoid and minimize 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 related inundation and erosion;
3. Ensure that the selection, design, creation, and use of development in flood hazard areas is accomplished in a manner that minimizes or eliminates the potential for flood and loss or damage to life and property in a flood hazard area and does not impair stream equilibrium, floodplain services, or the river corridor; and
4. Manage all flood hazard areas designated pursuant to 10 V.S.A. Chapter 32 § 753, the local hazard mitigation plan; and make the Town of Wilmington, its citizens, and businesses eligible for federal flood insurance, federal disaster recovery funds, and hazard mitigation funds as may be available.

602. Other Provisions

A. Precedence of Bylaw and Greater Restrictions

The provisions of this bylaw shall not in any way impair or remove the necessity of compliance with any other local, state, or federal laws or regulations. Where this flood hazard regulation imposes a greater restriction, the provisions here shall take precedence. If there is any conflict between the provisions of this bylaw, the more restrictive shall apply.

B. Validity and Severability

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

C. Warning and Disclaimer of Liability

This bylaw does not imply that land outside of the areas covered by this bylaw will be free from flood or erosion damages. This regulation shall not create liability on the part of the Town of Wilmington, or any town official or employee thereof, for any flood or erosion damages that result from reliance on this regulation, or any administrative decision lawfully made hereunder.

603. Lands to Which these Regulations Apply

A. Identification

The Regulated Flood Hazard Areas include:

1. The River Corridors and Small Stream 50 foot buffers as published by the Vermont Agency of Natural Resources on the Natural Resources Atlas as the Statewide River Corridor Map Layer, and refinements to that data based on field-based assessments. Together these areas are referred to as the “River Corridor” in this bylaw and are hereby adopted by reference and declared to be part of these regulations¹; and
2. The Special Flood Hazard Area (SFHA) in and on the Flood Insurance Study (FIS) and the accompanying Flood Insurance Rate Maps (FIRMs) dated September 28, 2007, or the most recent revision thereof, issued by the Department of Homeland Security, Federal Emergency Management Agency (FEMA), National Flood Insurance Program, as provided by the Secretary of the Agency of Natural Resources (ANR) pursuant to 10 V.S.A. Chapter 32 § 753, which are hereby adopted by reference and declared to be part of these regulations. This includes all digital data developed as part of the FIS²; and

These regulations shall apply to the above referenced areas (hereafter called “Regulated Flood Hazard Areas” unless referenced specifically) in the Town of Wilmington. These hazard areas overlay any other existing zoning districts and the regulations herein are the minimum standards that must be met before meeting the additional standards applicable in the underlying district.

B. Interpretation

¹ Official River Corridor Maps are available on the Vermont Agency of Natural Resources online Natural Resources Atlas: <http://anrmaps.vermont.gov/websites/anra/>

² FIS and FIRMs are available digitally on FEMA’s online Map Service Center: <https://msc.fema.gov/portal>

The information presented on any maps, or contained in any studies, adopted by reference, is presumed accurate.

1. If uncertainty exists with respect to the boundaries of the Special Flood Hazard Area or the floodway, the location of the boundary shall be determined by the Zoning Administrator (ZA). If the applicant disagrees with the determination made by the ZA, he or she may appeal to the Development Review Board. The burden of proof shall be on the appellant. A Letter of Map Amendment from the FEMA shall constitute proof.
2. If uncertainty exists with respect to the boundaries of the River Corridor, the location of the boundary shall be determined by the ZA. If the applicant disagrees with the determination made by the ZA, he or she may appeal to the Development Review Board. The burden of proof shall be on the appellant. A letter of determination from the Vermont Agency of Natural Resources shall constitute proof.

C. Description of FEMA Identified Special Flood Hazard Areas

The FEMA identified floodplain area shall consist of the following specific areas:

1. The Floodway Area shall be those areas identified in the FIS and the FIRM as floodway (AE with Floodway) and which represent the channel of a watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without increasing the water surface elevation by more than one (1) foot at any point. This term shall also include floodway areas which have been identified in other available studies or sources of information for those Special Flood Hazard Areas where no floodway has been identified in the FIS and FIRM.
 - a) Within any floodway area, no encroachments, including fill, new construction, substantial improvements, or other development shall be permitted unless it has been demonstrated through hydrologic and hydraulic analysis performed in accordance with standard engineering practice that the proposed encroachment would not result in any increase in flood levels within the municipality during the occurrence of the base flood discharge.
2. The AE Area/District shall be those areas identified as an AE Zone on the FIRM included in the FIS prepared by FEMA for which base flood elevations have been provided.
 - a) AE Area without floodway shall be those areas identified as an AE zone on the FIRM included in the FIS prepared by FEMA for which base flood elevations have been provided but no floodway has been determined.
3. The A Area/District shall be those areas identified as an A Zone on the FIRM included in the FIS prepared by FEMA and for which no base flood elevations have been provided. For these areas, elevation and floodway information from other Federal, State, or other acceptable sources shall be used when available. Where other acceptable information is

not available, the base flood elevation shall be determined by using the elevation of a point on the boundary of the identified floodplain area which is nearest the construction site.

In lieu of the above, the town may require the applicant to determine the base flood elevation with hydrologic and hydraulic engineering techniques. Hydrologic and hydraulic analyses shall be undertaken only by professional engineers or others of demonstrated qualifications, who shall certify that the technical methods used correctly reflect currently accepted technical concepts. Studies, analyses, computations, etc., shall be submitted in sufficient detail to allow a thorough technical review by the municipality.

4. The AO and AH Area/District shall be those areas identified as Zones AO and AH on the FIRM and in the FIS. These areas are subject to inundation by 1-percent annual-chance shallow flooding where average depths are between one and three feet. In Zones AO and AH, drainage paths shall be established to guide floodwaters around and away from structures on slopes.

D. Changes in Identification of Area

The Identified Floodplain Area may be revised or modified by the Development Review Board where studies or information provided by a qualified agency or person documents the need for such revision. However, prior to any such change to the Special Flood Hazard Area, approval must be obtained from FEMA. Additionally, as soon as practicable, but not later than six (6) months after the date such information becomes available, a municipality shall notify FEMA of the changes to the Special Flood Hazard Area by submitting technical or scientific data. See Section 607.D of this bylaw for situations where FEMA notification is required.

Administrative revisions to the River Corridor may be made at the request of the municipal legislative body to facilitate infill and redevelopment away from undeveloped river corridors and protect public infrastructure. The Agency of Natural Resources shall make those administrative revisions to the River Corridor or River Corridor Protection Area on the Statewide River Corridor Map Layer that are consistent with the procedure outlined in the most recent *Vermont DEC Flood Hazard Area and River Corridor Protection Procedures*.

604. Administration

A. Designation of the Floodplain Administrator

The Floodplain Administrator is hereby appointed to administer and enforce this bylaw and is referred to herein as the Zoning Administrator. The Zoning Administrator may: (A) Fulfill the duties and responsibilities set forth in these regulations, (B) Delegate duties and responsibilities set forth in these regulations to qualified technical personnel, plan examiners, inspectors, and other employees, or (C) Enter into a written agreement or written contract with another agency or private sector entity to administer specific provisions of these regulations.

Administration of any part of these regulations by another entity shall not relieve the municipality of its responsibilities pursuant to the participation requirements of the National

Flood Insurance Program as set forth in the Code of Federal Regulations at 44 C.F.R. Section 59.22.

In the absence of a designated Zoning Administrator, the Floodplain Administrator duties are to be fulfilled by the Town Manager.

B. Duties and Responsibilities of the Floodplain Administrator

1. The Zoning Administrator shall issue a Permit only after it has been determined that the proposed work to be undertaken will be in conformance with the requirements of this and all other applicable local codes and bylaws. Within 30 days after a local land use permit has been issued or within 30 days of the issuance of any notice of violation, the ZA shall:
 - a. Deliver the original or a legible copy of the permit, or notice of permit, and any approvals to the town clerk for recording in the land records as provided in 24 VSA, § 1154(a), and § 4449;
 - b. File a copy of the permit and any approvals in the town office in a location where all town land use permits shall be kept; and,
 - c. The ZA may charge the applicant for the cost of the recording fees as required by law.
2. Prior to the issuance of any permit, the Zoning Administrator shall inform any person applying for a permit or authorization that the person should contact the regional permit specialist employed by the Agency of Natural Resources in order to assure timely action on any other related state or federal permits; nevertheless, the applicant retains the obligation to identify, apply for, and obtain relevant state and federal permits. The applicant shall provide the Zoning Administrator with a copy of the Project Review Sheet issued by the regional permit specialist for awareness of what other permits are required.
 - a. Per 24 VSA § 4424, a permit may be issued only following receipt of comments from the Vermont Agency of Natural Resources, or the expiration of 30 days from the date the application was mailed to the Agency, whichever is sooner. The Development Review Board should consider comments from the NFIP Coordinator at ANR.
 - b. For development within the FEMA Identified SFHA, no permit shall be issued until all other necessary government permits required by state and federal laws have been obtained.
3. In the case of existing structures, prior to the issuance of any Development/Permit, the Zoning Administrator shall review the history of repairs to the subject building, so that any repetitive loss issues can be addressed before the permit is issued.
4. Within three days following the issuance of a permit, the ZA shall:
 - a. Deliver a copy of the permit to the Listers of the town; and

- b. Post a copy of the permit in at least one public place in the town until the expiration of 15 days from the date of issuance of the permit.
5. During the construction period, the Zoning Administrator or other authorized official shall inspect the premises to determine that the work is progressing in compliance with the information provided on the permit application and with all applicable local laws and bylaws. He/she shall make as many inspections before, during and upon completion of the work as are necessary, including, but not limited to, once the site has been staked out or demarcated but before actual start of construction.
6. In the discharge of his/her duties, the Zoning Administrator shall have the authority to enter any building, structure, premises or development in the Regulated Flood Hazard Area, upon presentation of proper credentials, at any reasonable hour to enforce the provisions of this bylaw.
7. In the event the Zoning Administrator discovers that the work does not comply with the permit application or any applicable laws and bylaws, or that there has been a false statement or misrepresentation by any applicant, the Zoning Administrator shall revoke the Permit and report such fact to the Development Review Board for whatever action it considers necessary.
8. The Zoning Administrator shall maintain all records associated with the requirements of this bylaw including, but not limited to:
 - a. All permits issued in areas covered by this bylaw;
 - b. Elevation Certificates with the as-built elevation (consistent with the datum of the elevation on the current Flood Insurance Rate Maps for the municipality) of the lowest floor, including basement, of all new or substantially improved buildings (not including accessory buildings) in the Special Flood Hazard Areas;
 - c. All flood proofing and other certifications required under this regulation;
 - d. All decisions of the Development Review Board (including conditional use decisions, waivers, variances and violations) and all supporting findings of fact, conclusions and conditions;
 - e. Finished construction elevation data;
 - f. Inspection documentation; and
 - g. Enforcement documentation.
9. The Zoning Administrator is the official responsible for submitting a biennial report to the FEMA concerning community participation in the National Flood Insurance Program.

C. Public Notice

1. Prior to the issuance of a permit, proposals needing conditional use review, nonconforming structures and uses review, or approval for a variance or waiver, must have a warned public hearing as per 24 V.S.A. Chapter 117 § 4464. A copy of the application shall be submitted to VT Agency of Natural Resources (ANR) at least 30

days prior to the date of the public hearing. Public notice of the hearing shall be provided not less than 15 days prior to the date of the public hearing by all the following:

- a. Publication of the date, place, and purpose of the hearing in a newspaper of general circulation in the town affected;
 - b. Posting of the same information in three or more public places within the town including posting within view from the public right-of-way nearest to the property for which an application is made;
 - c. Written notification to the applicant and to owners of all properties adjoining the property subject to development, without regard to any public right-of-way and, in any situation in which a waiver or variance is sought regarding setbacks from a state highway, also including written notification to the secretary of transportation. The notification shall include a description of the proposed project and shall be accompanied by information that clearly informs the recipient where additional information may be obtained, and that participation in the local proceeding is a prerequisite to the right to take any subsequent appeal; and
 - d. For hearings on subdivision plats located within 500 feet of a town boundary, written notification to the clerk of the adjoining town.
2. Public notice of all other types of development review hearings, including site plan review shall be given not less than seven (7) days prior to the date of the public hearing, and shall at minimum include the following:
- a. Posting of the date, place and purpose of the hearing in three (3) or more public places within the affected town; and
 - b. Written notification to the applicant and to owners of all properties adjoining the property subject to development, without regard to public rights-of-way and, in any situation in which a waiver or variance is sought regarding setbacks from a highway, also including written notification to the secretary of transportation. The notification shall include a description of the proposed project, information that clearly informs the recipient where additional information may be obtained, and that participation in the local proceeding, is a prerequisite to the right to take any subsequent appeal.
3. The applicant shall bear the cost of the public warning and notification of adjoining landowners and interested parties as defined per 24 V.S.A. Chapter 117 § 4465(b).
4. Per 24 V.S.A. Chapter 117 § 4464(a)(5), no defect in the form or substance of any required public notice under this section shall invalidate the action of the Development Review Board where reasonable efforts have been made to provide adequate posting and notice. However, the action shall be invalid when the defective posting or notice was materially misleading in content. If an action is ruled to be invalid by the Development Review Board or the Environmental Court, the action shall be remanded to the Development Review Board to provide new posting and notice, hold a new hearing, and take a new action.

D. Decisions

The ZA shall act within 30 days of receipt of a complete application, to approve or deny the application, or refer the application to the Development Review Board. Applications that cannot be approved in compliance with this bylaw shall be denied. The decision shall be issued in writing and include a statement of the factual bases on which the conclusions were made. Decisions of the ZA can be appealed as per this bylaw and 24 V.S.A. Chapter 117 § 4465-4472. If the ZA fails to act within the 30-day period, a permit shall be deemed issued on the 31st day.

E. Appeals

An interested party may appeal any decision or act taken by the Zoning Administrator in any town by filing a notice of appeal with the secretary of the Development Review Board of that town or with the clerk of that town if no such secretary has been elected. This notice of appeal must be filed within 15 days of that decision or act, and a copy of the appeal shall be filed with the Zoning Administrator. The Development Review Board shall set a date and place for a public hearing of an appeal within 60 days of the filing of the notice of appeal and shall mail the appellant a copy of that notice not less than 15 days prior to the hearing date. Hearings on appeals are governed per 24 V.S.A. Chapter 117 § 4468. Decisions on appeals are governed per 24 V.S.A. Chapter 117 § 4464(b).

1. The Development Review Board shall consider comments from the NFIP Coordinator at ANR. The Development Review Board may recess the proceedings on any application pending submission of additional information. The Development Review Board should close the evidence promptly after all parties have submitted the requested information, adjourn the hearing, and may deliberate prior to issuing its decision.
2. Decisions of the Development Review Board shall be issued in writing within 45 days after the adjournment of the final hearing, and failure of the Development Review Board to issue a decision within this period shall be deemed approval and shall be effective on the 46th day. Decisions shall be in writing and shall be sent by certified mail to the applicant and the appellant. Copies of the decision shall also be mailed to every person or body appearing and having been heard at a hearing. The decision will include a notice that an interested person may appeal the decision to the Environmental Court as per 24 V.S.A. Chapter 117 § 4471.
3. Decisions by the Development Review Board shall include a statement of the factual basis on which the Development Review Board has made its conclusions regarding how the proposed development will meet the development standards, and a statement of the conclusions. The minutes of the meeting may suffice, provided the factual bases and conclusions relating to the review standards are provided.
4. In rendering a decision in favor of the applicant, the Development Review Board may attach additional reasonable conditions and safeguards as it deems necessary to implement the purposes of this bylaw and the town plan then in effect. Development Review Board decisions shall be conditioned to assure that all necessary permits must be

also received from those government agencies from which approval is required by Federal, State or local law for the approval to be valid. The Development Review Board may provide for the conditioning of permit issuance on the submission of a bond, escrow account, or other surety in a form acceptable to the legislative body of the town to assure one or more of the following: the completion of the project, adequate stabilization, or protection of public facilities that may be affected by a project.

NOTE: Granting of an appeal will not relieve a landowner or a town from the obligation to comply with the minimum requirements of the National Flood Insurance Program. Landowners and municipalities that fail to meet the Program's minimum requirements, notwithstanding any appellate decision to the contrary, are in violation of the National Flood Insurance Program and remain subject to the accompanying penalties.

F. Permit Validity

Each permit issued shall:

1. Contain a statement of the period of time within which an appeal may be filed;
2. Require posting of a notice of permit on a form prescribed by the town within view from the public right-of-way most nearly adjacent to the subject property for not less than 15 days after issuance, which is the appeal filing period.
3. Not take effect until 16 days after issuance, or in the event that a notice of appeal of a decision by the ZA is properly filed, no such permit shall take effect until adjudication of that appeal by the Development Review Board is complete and the time for taking an appeal to the environmental court has passed without an appeal being taken. If an appeal is taken to the environmental court, the permit shall not take effect until adjudication by the environmental court; and,
4. Be valid for a period of two years after issuance.

G. Changes

After the issuance of a permit, no changes of any kind shall be made to the application, permit or any of the plans, specifications or other documents submitted with the application without the written consent or approval of the Zoning Administrator. If changes are deemed necessary, requests for such change shall be in writing, and shall be submitted by the applicant to the Zoning Administrator for consideration. The ZA shall determine if the change requires a new permit application, or an amendment can be made to the existing permit. The ZA may require the applicant to hire a professional engineer, or other professional of demonstrated qualifications, to determine if the change will cause any change to the Base Flood Elevation, but that may not be the only consideration taken by the ZA in determining if a new application is required.

H. Start of Construction

Work on the proposed construction or development shall begin within 180 days after the date of issuance of the permit. Work shall also be completed within twenty-four (24) months after the date of issuance of the permit or the permit shall expire unless a time extension is granted, in writing, by the Zoning Administrator.

The actual start of construction 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, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or 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, whether or not that alteration affects the external dimensions of the building.

Time extensions shall be granted only if a written request is submitted by the applicant, who sets forth sufficient and reasonable cause for the Zoning Administrator to approve such a request and the original permit is compliant with the bylaw & FIRM/FIS in effect at the time the extension is granted.

605. Permit Application Guidelines

A. Application Submission Requirements

1. Applications for development in a Regulated Flood Hazard Area shall be made, in writing, to the Zoning Administrator on forms supplied by the Town of Wilmington. Such application shall include:
 - a. The name and contact information for the owner of the property, including any agents authorized to act on their behalf;
 - b. A thorough description of the proposed development;
 - c. General location map including the address of the property, tax parcel ID, relative locations of the existing development and the nearest public road;
 - d. Where applicable, a site plan that depicts the proposed development, all water bodies, Special Flood Hazard Areas, River Corridors and 50-foot stream buffers, any existing and proposed drainage, any proposed fill, and pre and post development grades, and the elevation of the proposed lowest floor, as referenced to the same vertical datum as the elevation on the current Flood Insurance Rate Maps;
 - e. Two copies of the application, including one to be forwarded to the State National Flood Insurance Program Coordinator at the Vermont Agency of Natural Resources, Department of Environmental Conservation, River Management Program; and,
 - f. The appropriate fee as determined by the Selectboard.
2. If any proposed construction or development is located entirely or partially within any FEMA defined Special Flood Hazard Area or Town Identified Flood Hazard Area,

applicants for Permits shall provide all the necessary information listed below, in addition to that mentioned above in 605.A(1), in sufficient detail and clarity to enable the Zoning Administrator to determine that:

1. all such proposals are consistent with the need to minimize flood damage and conform with the requirements of this and all other applicable codes and bylaws;
 2. all utilities and facilities, such as sewer, gas, electrical and water systems are located and constructed to minimize or eliminate flood damage;
 3. adequate drainage is provided so as to reduce exposure to flood hazards;
 4. structures will be anchored to prevent floatation, collapse, or lateral movement;
 5. building materials are flood-resistant;
 6. appropriate practices that minimize flood damage have been used; and
 7. electrical, heating, ventilation, plumbing, air conditioning equipment, and other service facilities have been designed and located to prevent water entry or accumulation.
3. If any proposed construction or development is located entirely or partially within any FEMA defined Special Flood Hazard Area or Town Identified Flood Hazard Area, applicants for Permits shall provide the following data and documentation, in addition to that mentioned above in 605.A(1) and (2):
1. if available, information concerning flood depths, pressures, velocities, impact and uplift forces and other factors associated with a base flood;
 2. detailed information concerning any proposed floodproofing measures and corresponding elevations;
 3. document, certified by a registered professional engineer or architect, which states that the proposed construction or development has been adequately designed to withstand the pressures, velocities, impact and uplift forces associated with the base flood. Such statement shall include a description of the type and extent of flood proofing measures which have been incorporated into the design of the structure and/or the development;
 4. documentation, certified by a registered professional engineer or architect, to show that the cumulative effect of any proposed development within any Special Flood Hazard Area (See Section 603.C of this bylaw), when combined with all other existing and anticipated development, will not cause any increase in the base flood elevation in any identified Floodway or Special Flood Hazard Area outside the Floodway; and
 5. A Vermont Agency of Natural Resources Project Review Sheet for the proposal. The Project Review Sheet shall identify State and Federal agencies from which permit approval may be required for the proposal. The identified permits, or letters indicating that such permits are not required, shall be submitted to the ZA and attached to the permit before work can begin in any FEMA defined Special Flood Hazard Area.

4. For applicants seeking conditional use approval, approval under nonconforming structures and uses, a waiver, or a variance, for development within any Regulated Flood Hazard Area, the following also need to be provided , in addition to that mentioned above in 605.A(1), (2) and (3):
 - a. A list of abutters names and mailing addresses;
 - b. A statement of purpose and need for the proposed development;
 - c. A description of the alternatives considered to the proposed development, including alternate locations on the parcel or site, especially outside of the hazard area;
 - d. Such pertinent information as identified in the regulations or deemed necessary by the Development Review Board for determining the suitability of the proposed development for the site;
 - e. For a waiver, then the application must include responses to the regulations set forth in CFR 60.6 (only if located in the FEMA Identified SFHA), and Section 609 of this bylaw;
 - f. For a variance, then the application must include responses to the regulations set forth in 24 VSA § 4469, and CFR 60.6 (only if located in the FEMA Identified SFHA), and Section 610 of this bylaw;
 - g. Copies of the application sufficient for the Development Review Board members, the State National Flood Insurance Program Coordinator, and additional parties such as the VT DEC Stream Alteration Engineer and adjacent municipalities if affected under Section 604.C(1)(d) of this bylaw; and,
 - h. Any additional fees as required by the Selectboard.

B. Referrals

1. Upon receipt of a complete application for a substantial improvement or new construction, the Zoning Administrator shall submit a copy of the application and supporting information to the State National Flood Insurance Program (NFIP) Coordinator at the Vermont Agency of Natural Resources, in accordance with 24 V.S.A. Chapter 117 § 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. The Development Review Board should consider comments from the NFIP Coordinator at ANR.
2. If the applicant is seeking a permit for the alteration or relocation of a watercourse, applicant shall provide the adequate number of copies of the application for the Zoning Administrator to submit copies to the adjacent communities, the Stream Alteration Engineer at the Vermont Agency of Natural Resources, and the Army Corps of Engineers. Copies of such notice shall be provided to the State National Flood Insurance Program (NFIP) Coordinator at the Vermont Agency of Natural Resources, Department of Environmental Conservation. A permit may be issued only following receipt of comments from the Vermont Agency of Natural Resources, or the expiration of 30 days from the date the application was mailed to the Vermont Agency of Natural Resources, whichever is sooner. The Development Review Board should consider comments from the NFIP Coordinator at ANR.

606. Development in Regulated Flood Hazard Areas

A. Permit Requirement

A permit is required from the Zoning Administrator (ZA) for all proposed construction and development in all areas defined in Section 603.A. Development that requires conditional use approval, non-conforming use approval, a waiver, or a variance from the Development Review Board under these flood hazard regulations, must have such approvals prior to the issuance of a permit by the ZA. Any development subject to town jurisdiction in the designated hazard areas shall meet all relevant criteria in Section 607 of this bylaw. A permit may be issued only following receipt of comments from the Vermont Agency of Natural Resources, or the expiration of 30 days from the date the application was mailed to the Agency, whichever is sooner. The Development Review Board should consider comments from the NFIP Coordinator at ANR. For development within the SFHA, no permit shall be issued until all other necessary government permits required by state and federal laws have been obtained.

B. Permitted Development

For the purposes of review under these regulations, the following development activities in the Special Flood Hazard area, where outside of the floodway and outside of the River Corridor, and meeting the Technical Provisions in Section 607 of this bylaw, require only an administrative permit from the ZA:

1. Non-substantial improvements to existing residential and non-residential structures, providing the improvements do not decrease the pre-existing distance between the unaltered structure and the top of bank;
2. Accessory structures built in accordance with 607.A(8) of this bylaw;
3. Development related to on-site septic or water supply systems in accordance with 607.A(11) and (13) of this bylaw;
4. Building utilities in accordance with relevant Technical Provisions in Section 607 of this bylaw;
5. At-grade parking for existing buildings; and,
6. Recreational vehicles, provided they are fully licensed and ready for highway use.

C. Prohibited Development in Regulated Flood Hazard Areas

For the purposes of review under these regulations, the following development activities are prohibited in any Regulated Flood Hazard Area, and would only be allowed via issuance of a variance or waiver:

1. New residential or non-residential structures (including the placement of new manufactured homes);
2. Any improvement to an existing structure that expands the footprint of the existing structure more than 500 square feet and decreases the pre-existing distance between the unaltered structure and the top of bank;
3. Storage or junk yards;

4. New fill, except as necessary to elevate structures above the base flood elevation, and placed in accordance with 607.A(16) of this bylaw;
5. Accessory structures in the Floodway;
6. Critical facilities in all areas affected by mapped flood hazards; and,
7. All development not otherwise exempted, permitted, or conditionally permitted.

D. Conditional Use Review

Conditional use review and approval by the Development Review Board, is required prior to the issuance of a permit by the ZA for the following proposed development, which shall be undertaken in accordance with all relevant technical provisions described in Section 607.A of this bylaw:

1. Substantial improvement, elevation, relocation, or flood-proofing of an existing residential or non-residential structure that does not expand the footprint of the existing structure more than 500 square feet and does not decrease the pre-existing distance between the unaltered structure and the top of bank;
2. New or replacement storage tanks for existing structures placed in accordance with 607.A(17), (19) and (24) of this bylaw;
3. Any improvements to existing residential and non-residential structures in the floodway;
4. Grading, excavation, or the creation of a pond;
5. Improvements to existing roads or streets, in accordance with 607.A(14) of this bylaw;
6. Bridges, culverts, channel management activities, or public projects which are functionally dependent on stream access or stream crossing;
7. Public utilities;
8. Subdivision of land in the SFHA or River Corridor in accordance with 607.A(15) of this bylaw;
9. Accessory structures in the River Corridors, of 500 square feet or less, that represent a minimal investment, and are in accordance with 607.A(8) of this bylaw;
10. Building utilities placed in accordance with the relevant standards of this bylaw;
11. Power generation facilities and infrastructure not otherwise regulated by 30 V.S.A. Chapter 5 § 248; and
12. At-grade parking for existing buildings in the River Corridor.

E. Exempted Activities

The following are exempt from regulation under this bylaw:

1. The removal of a building or other structure in whole or in part, in conjunction with an approved site stabilization plan³;
2. Maintenance of existing roads and stormwater drainage;
3. Silvicultural (forestry) activities conducted in accordance with the Vermont Department of Forests and Parks Acceptable Management Practices; and,

³ Approval could come from Army Corps of Engineers, Agency of Natural Resources, a grant funding entity, or the Floodplain Administrator.

4. Agricultural activities conducted in accordance with the Vermont Department of Agriculture's Required Agricultural Practices. Prior to the construction of farm structures the farmer must notify the ZA in writing of the proposed activity. The notice must contain a sketch of the proposed structure including setbacks.

F. Nonconforming Structures and Uses

The Development Review Board may, after public notice and hearing, approve the repair, relocation, replacement, or enlargement of a nonconforming structure within a Regulated Flood Hazard Area provided that:

1. The proposed development is in compliance with all the Technical Provisions in Section 607 of this bylaw;
2. A nonconforming structure that is substantially damaged or destroyed may be reconstructed in place only in circumstances when the structure cannot be relocated to a less hazardous location on the parcel, provided it is outside of the Floodway. A nonconforming structure cannot be rebuilt in the floodway. The lowest floor of the reconstructed residential structure must be rebuilt with the lowest floor elevated to five feet or more above the base flood elevation, and a non-residential structure must be floodproofed according to 607.A(4) of this bylaw, and the structure must otherwise comply with all requirements of the National Flood Insurance Program and this bylaw;
3. Nonconforming structures or uses shall be considered abandoned where such structures or uses are discontinued for not less than 12 months;
4. An individual manufactured home remaining occupied in an existing manufactured home park that is vacated shall not be considered a discontinuance or abandonment of nonconformity. Replacement manufactured homes must be placed so as to meet the development standards in this bylaw; and
5. A nonconformity, located in a Regulated Flood Hazard Area, that the town deems to be a public nuisance or public health risk or hazard may be abated or removed as per 24 V.S.A. Chapter 117 § 4412.7(C).

607. Technical Provisions

The criteria below are the minimum standards for development in Regulated Flood Hazard Areas. Where more than one zone or area is involved, the most restrictive standard shall take precedence.

A. Regulated Flood Hazard Area Development Standards

1. *All development* shall be:
 - a. Reasonably safe from flooding and fluvial erosion risk;
 - b. Designed, operated, maintained, modified, and adequately anchored to prevent flotation, collapse, release, or lateral movement of the structure;
 - c. Constructed with materials resistant to flood damage⁴;

⁴ Refer to *FEMA Technical Bulletin 2-9: Flood Resistant Materials Requirements*

- d. Constructed by methods and practices that minimize flood damage;
 - e. Constructed with electrical, heating, ventilation, plumbing, air conditioning equipment, and other service facilities designed and/or located to prevent water from entering or accumulating within the components during conditions of flooding;
 - f. Adequately drained to reduce exposure to flood hazards; and
 - g. Located so as to minimize conflict with changes in channel location over time and the need to intervene with such changes.
2. *Within any SFHA*, no development shall be permitted without first determining the base flood elevation and demonstrating that the cumulative effect of the proposed development, when combined with all other existing and anticipated encroachments in the municipality, will not cause any increase in the BFE. New development that proposes to displace floodwater storage in the SFHA must provide compensatory storage to offset the impacts of any increase in the extent or level of floodwaters during peak flows up to and including the base flood discharge. This demonstration must be supported by technical data that conforms to standard hydraulic engineering principles and is certified by a licensed professional engineer.
3. *New Residential Structures or Residential Structures to be substantially improved* in Zones A, A1-30, AE, and AH shall be located such that the lowest floor is at least five feet above base flood elevation. This must be documented in as-built condition, with a FEMA Elevation Certificate.
4. *Non-residential structures in the SFHA to be substantially improved* shall:
- a. Meet the elevation standards for Residential Structures outlined above in 607.A(3) of this bylaw; or,
 - b. Have the lowest floor, including basement, together with attendant utility and sanitary facilities designed so that five feet 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. A permit for flood-proofing shall not be issued until a licensed 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.
5. *Fully enclosed areas below grade on all sides* (including below grade crawlspaces and basements) are prohibited.
6. *Fully enclosed areas that are above grade on all sides*, but below the lowest floor, below BFE and/or are subject to flooding, shall:
- a. Be used solely for the parking of a vehicle, building access, or incidental storage in an area other than a basement, and such a condition shall clearly be stated on any permits; and,
 - b. Be designed and constructed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Such designs must

be certified by a licensed professional engineer or architect, or meet or exceed the following minimum criteria: (1) A minimum of two openings on two walls 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; (2) The bottom of all openings shall be no higher than one foot above grade; and (3) Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

7. *Recreational vehicles* must be fully licensed and ready for highway use.

8. *Accessory structures*

Structures accessory to a principal building need not be elevated or floodproofed to remain dry, but shall comply, at a minimum, with the following requirements:

- a) the structure shall not be designed or used for human habitation, but shall be limited to the parking of vehicles, or to the storage of tools, material, and equipment related to the principal use or activity.
- b) floor area shall not exceed 500 square feet.
- c) the structure will have a low damage potential.
- d) the structure will be located on the site so as to cause the least obstruction to the flow of flood waters.
- e) power lines, wiring, and outlets will be elevated to one foot above the base flood elevation.
- f) permanently affixed utility equipment and appliances such as furnaces, heaters, washers, dryers, etc. are prohibited.
- g) sanitary facilities are prohibited.
- h) the structure shall be adequately anchored to prevent flotation or movement and shall be designed to automatically provide for the entry and exit of floodwater for the purpose of equalizing hydrostatic forces on the walls. Designs for meeting this requirement must either be certified by a registered professional engineer or architect, or meet or exceed the following minimum criteria:
 - i. a minimum of two openings having a net total area of not less than one (1) square inch for every square foot of enclosed space.
 - ii. the bottom of all openings shall be no higher than one (1) foot above grade.
 - iii. openings may be equipped with screens, louvers, etc. or other coverings or devices provided that they permit the automatic entry and exit of flood waters.

9. If a variance is obtained according to Section 610 of this bylaw, *all manufactured homes, and any improvements thereto*, shall be:

1. placed on a permanent foundation;
2. elevated so that the lowest floor of the manufactured home is at least to five feet above the base flood elevation; and,
3. anchored to resist flotation, collapse, or lateral movement; and
4. have all ductwork and utilities including HVAC/heat pump elevated to five feet above the base flood elevation.

10. *Historic Structures*

Historic structures undergoing repair or rehabilitation that would constitute a substantial improvement as defined in this bylaw, must comply with all bylaw requirements that do not preclude a structure or district's continued historic designation. Documentation that a specific bylaw requirement will cause removal of the structure, or district that the structure lies within, from the National Register of Historic Places or the State Inventory of Historic places must be obtained from the Secretary of the Interior or the State Historic Preservation Officer. Any exemption from bylaw requirements will be the minimum necessary to preserve the historic character and design of the structure and/or district.

11. *Water supply systems* shall be designed to minimize or eliminate infiltration of flood waters into the systems.
12. *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.
13. *On-site waste disposal systems* shall be located to avoid impairment to them or contamination from them during flooding.
14. *Streets* finished elevation shall be no more than one (1) foot below the base flood elevation.
15. *Subdivisions, Manufactured Home Parks, and Planned Unit Developments* must be accessible by dry land access outside the special flood hazard area. All subdivision proposals and development proposals containing at least 50 lots or at least 5 acres, whichever is the lesser, in FEMA Identified SFHA's where base flood elevation data are not available, shall be supported by hydrologic and hydraulic engineering analyses that determine base flood elevations and floodway information. The analyses shall be prepared by a licensed professional engineer in a format required by FEMA for a Conditional Letter of Map Revision and Letter of Map Revision. Submittal requirements and processing fees shall be the responsibility of the applicant. If such a subdivision is proposed in a flood prone area, assure that:
 - a. Such proposal minimizes flood damage;
 - b. Is proposed to be constructed with electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding; and
 - c. Adequate drainage is provided to reduce exposure to flood hazards.
16. If *Fill* is used to elevate structures above the base flood elevation, it shall:
 - a. extend laterally at least fifteen (15) feet beyond the building line from all points;
 - b. consist of soil or small rock materials only - Sanitary Landfills shall not be permitted;
 - c. be compacted to provide the necessary permeability and resistance to erosion, scouring, or settling;

- d. be no steeper than one (1) vertical to two (2) horizontal feet unless substantiated data justifying steeper slopes are submitted to, and approved by the Zoning Administrator; and
- e. be used to the extent to which it does not adversely affect adjacent properties.
- f. Fill shall be inspected and approved by the ZA or a professional engineer prior to placement of any structure atop fill.

17. *Storage* of all materials that are buoyant, flammable, explosive or in times of flooding, could be injurious to human, animal, or plant life, shall be stored at or above one foot above the base flood elevation or floodproofed to the maximum extent possible, including being firmly anchored in accordance with accepted engineering practices to prevent flotation, collapse, or lateral movement.

18. *Existing residential and non-residential buildings, including manufactured homes, to be substantially improved in Zone AO* shall have the lowest floor, including basement, elevated above the highest adjacent grade, at least as high as the depth number specified on the community's FIRM, or at least two feet if no depth number is specified.

19. *Anchoring*

1. All buildings and structures shall be firmly anchored in accordance with accepted engineering practices to prevent flotation, collapse, or lateral movement.
2. All air ducts, large pipes, storage tanks, and other similar objects or components located below the base flood elevation shall be securely anchored or affixed to prevent flotation.

20. *Floors, Walls and Ceilings*

1. Wood flooring used at or below the base flood elevation shall be installed to accommodate a lateral expansion of the flooring, perpendicular to the flooring grain without causing structural damage to the building.
2. Plywood used at or below the base flood elevation shall be of a "marine" or "water-resistant" variety.
3. Walls and ceilings at or below the base flood elevation shall be designed and constructed of materials that are "water-resistant" and will withstand inundation.
4. Windows, doors, and other components at or below the base flood elevation shall be made of metal or other "water-resistant" material.

21. *Paints and Adhesives*

1. Paints and other finishes used at or below the base flood elevation shall be of "marine" or "water-resistant" quality.
2. Adhesives used at or below the base flood elevation shall be of a "marine" or "water-resistant" variety.

3. All wooden components (doors, trim, cabinets, etc.) used at or below the base flood elevation shall be finished with a "marine" or "water-resistant" paint or other finishing material.

22. *Electrical Components*

Electrical distribution panels shall be at least five (5) feet above the base flood elevation. Separate electrical circuits shall serve lower levels and shall be dropped from above.

23. *Equipment*

Water heaters, furnaces, air conditioning and ventilating units, and other electrical, mechanical or utility equipment or apparatus shall not be located below the base flood elevation.

24. *Fuel Supply Systems*

All gas and oil supply systems shall be designed to prevent the infiltration of flood waters into the system and discharges from the system into flood waters. All components located below the base flood elevation shall be securely anchored or affixed to prevent flotation or unmooring. Additional provisions shall be made for the drainage of these systems in the event that flood water infiltration occurs.

B. Floodway Areas

1. Encroachments or development above grade and less than five feet above the base flood elevation, are prohibited unless hydrologic and hydraulic analyses are performed in accordance with standard engineering practice, by a licensed professional engineer, certifying that the proposed development will:
 - a) Not result in any increase in flood levels (0.00 feet) during the occurrence of the base flood;
 - b) Not increase any risk to surrounding properties, facilities, or structures from erosion or flooding.
2. Public utilities may be placed underground, and the analyses may be waived, where a licensed professional engineer certifies that there will be no change in grade and the utilities will be adequately protected from scour.

C. River Corridors

1. Improvements to existing structures, and any associated fill as needed to comply with elevation requirements in the Special Flood Hazard Area shall not decrease the distance between the existing primary building and the top of bank;
2. Accessory structures may be located within 50 feet of the existing primary building provided that the location does not decrease the distance between the existing primary structure and the top of bank.
3. Development shall not increase the susceptibility of that or other properties to fluvial erosion damage;

4. Development shall not increase the potential of materials being swept onto other lands or into the stream and causing damage to other properties from fluvial erosion;
5. In a designated center that lies in the River Corridor, infill development is allowed provided that the location of said development does not decrease the distance between existing adjacent structures and the top of bank.
6. Development shall not cause an undue burden on public services and facilities including roads, bridges, culverts, and emergency service providers during and after fluvial erosion events.
7. Bridge and culvert projects must have a Stream Alteration Permit; and
8. Channel management activities must be authorized by the Vermont Agency of Natural Resources.

D. Alteration or Relocation of Watercourse

1. No encroachment, alteration, or improvement of any kind shall be made to any watercourse until all adjacent towns which may be affected by such action have been notified by the town, and until all required permits or approvals have first been obtained from the Vermont Agency of Natural Resources.
 2. No encroachment, alteration, or improvement of any kind shall be made to any watercourse unless it can be shown that the activity will not decrease stream stability, or reduce or impede the flood carrying and sediment transport capacity of the watercourse in any way.
 3. In addition, FEMA shall be notified prior to any alteration or relocation of any watercourse. The applicant is responsible for submission of technical or scientific data to FEMA and any associated FEMA processing fees.
- E. Any new construction, development, uses or activities allowed within any Regulated Flood Hazard Area shall be undertaken in strict compliance with the provisions contained in this bylaw and any other applicable codes, bylaws and regulations.
- F. Any modification, alteration, reconstruction, or improvement of any kind that meets the definition of “repetitive loss” shall be undertaken only in full compliance with the provisions of this bylaw.

608. Enforcement and Penalties

- A. This bylaw shall be enforced under the town zoning bylaw in accordance with 24 V.S.A. Chapter 117 § 4451, § 4452 and 24 V.S.A. Chapter 59 § 1974a.
- B. Whenever the Zoning Administrator or other authorized town representative determines that there are reasonable grounds to believe that there has been a violation of any provisions of this bylaw, or of any regulations adopted pursuant thereto, the Zoning Administrator shall give notice of such alleged violation as hereinafter provided. Such notice shall:

1. be in writing;
2. include a statement of the reasons for its issuance;
3. state that the alleged offender has an opportunity to cure the violation within seven days of receipt;
4. state that failure to cure the violation may result in fines and/or loss of flood insurance;
5. state that the alleged offender will not be entitled to an additional warning notice for a violation occurring after the seven days within the next succeeding 12 months;
6. be served upon the property owner or his agent as the case may require; provided, however, that such notice or order shall be deemed to have been properly served upon such owner or agent when a copy thereof has been served with such notice by any other method authorized or required by the laws of this State; and,
7. contain an outline of remedial actions which, if taken, will affect compliance with the provisions of this bylaw.

C. Copies of the notice of violation will be:

1. Mailed to the Vermont NFIP Coordinator and, within 30 days be
2. Filed in the land use permit files; and,
3. Delivered to the town clerk for recording in the land records.

D. After seven days, if the violation has not been remedied, in accordance with 24 VSA Chapter 59 § 1974a, and Chapter 117 § 4451 and § 4452; any person who is found to have violated this bylaw shall be fined by the court not more than \$200.00 for each offense. No action may be brought under this section unless such notice as required has been given as described above in this part. In default of payment of the fine, the violator shall pay double the amount of the fine. Each day that a violation is continued shall constitute a separate offense.

E. Within any FEMA Identified Special Flood Hazard Area, if any appeals have been resolved, but the violation remains, the ZA shall submit a declaration to the Administrator of the National Flood Insurance Program requesting a denial of flood insurance to the violator. The declaration 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 bylaw, (c) a clear statement that the Zoning Administrator 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.

609. Waivers

- A. The purpose of a waiver is to allow for the reduction of dimensional requirements that might not meet the standards necessary to grant a variance.
1. Pursuant to 24 V.S.A. § 4414(8), waivers to dimensional requirements of this bylaw may be granted by the Development Review Board after considering the Waiver Criteria in Section 609.A(3) below. The burden of proof is on the applicant to demonstrate that the waiver requested meets the Waiver Criteria.
 2. A waiver may be granted to any of the dimensional requirements in this bylaw.
 3. Waiver Criteria. The Development Review Board may grant a waiver(s) to a dimensional requirement(s) after making findings on the following criteria:
 - i. The waiver is helpful or necessary to allow for reasonable use of the property.
 - ii. The waiver is the minimum reduction in the dimensional requirement that will enable the reasonable use of the property.
 - iii. Any adverse effects of the waiver are mitigated by design, screening, or other remedies.
 - iv. The need for a waiver was not created by past decisions of the applicant.
 - v. The proposed project will still conform to the Wilmington Town Plan.
 - vi. The proposed project will still conform to the purpose of this bylaw, as stated in Section 601 of this bylaw, and any underlying zoning district in which the land development is located.
 - vii. The proposed project will not have an undue adverse effect on the following:
 - a) Surrounding properties and property values
 - b) The character and aesthetics of the neighborhood
 - c) Traffic patterns and circulation
 - d) Public health, safety, and utility services
 - e) Stormwater management
 - f) Water and wastewater capacity
 - g) Disability accessibility, fire safety, and other requirements of the law
 - h) Energy conservation and renewable energy structures
 - i) Changes in channel location over time and the need to intervene with such changes
 - j) Any increase in the BFE in any FEMA Identified SFHA. In A districts, BFE's are determined using the methodology described in Section 603.C(3) of this bylaw.

B. Waiver Application and Review Process

1. The application shall come to the Development Review Board either from the applicant as an appeal of a decision of the ZA or a referral from the ZA.
2. Requests for waivers are considered by the Development Review Board. Any request for a waiver will be warned and a public hearing held, subject to procedures set forth in Section 604 of this bylaw.
3. The Development Review Board shall consider the opinion of abutters in deciding whether to grant the waiver.
4. The Development Review Board shall consider comments from the NFIP Coordinator at ANR in deciding whether to grant the waiver.
5. In granting a decision in favor of the applicant, the Development Review Board may attach reasonable conditions, including mitigation by design, screening, or other remedy.
6. Any waiver granted under this section shall be limited to the specific property to which it has been granted. A waiver on one property shall not be construed as a general guideline or standard for any other property.
7. Expiration: Waiver approvals shall expire by limitation if work is not completed within twenty-four (24) months after the date of issuance. All work must be completed as shown on any approved plan before the expiration date. One year extensions of this deadline may be granted by the ZA prior to expiration. Requests for extensions must be made in writing.
8. Appeals: Any request for a Waiver that is denied may be appealed subject to Section 604.E of this bylaw.

610. Variances

If compliance with any of the requirements of this bylaw would result in an exceptional hardship to a prospective builder, developer or landowner, the Town of Wilmington may, upon request, grant relief from the strict application of the requirements. Variances may be granted in writing by the Development Review Board only in accordance with all the criteria below and in 24 V.S.A. § 4469 and 44 CFR Section 60.6.

1. No variance shall be granted in the Special Flood Hazard Area that would cause any increase in the BFE. In A districts, BFE's are determined using the methodology described in Section 603.C(3) of this bylaw.
2. There are unique physical circumstances or conditions, including irregularity, narrowness, or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to the particular property, and that unnecessary hardship is

due to these conditions, and not the circumstances or conditions generally created by the provisions of the bylaw in the neighborhood or district in which the property is located.

3. If granted, a variance shall involve only the least modification necessary to provide relief.
4. In granting any variance, the Town of Wilmington shall attach whatever reasonable conditions and safeguards it considers necessary in order to protect the public health, safety, and welfare, and to achieve the objectives of this bylaw.
5. A variance for development within the River Corridor may be allowed if, based on a review by VT ANR, it is determined that the proposed development will not obstruct the establishment and maintenance of fluvial geomorphic equilibrium for the watercourse.
6. Whenever a variance is granted, the Town of Wilmington shall notify the applicant in writing that:
 - a. The granting of the variance may result in increased premium rates for flood insurance.
 - b. Such variances may increase the risks to life and property.
7. In reviewing any request for a variance, the Town of Wilmington shall consider, at a minimum, the following:
 - a. That there is good and sufficient cause.
 - b. That failure to grant the variance would result in exceptional hardship to the applicant.
 - c. That the granting of the variance will:
 - i. neither result in an unacceptable or prohibited increase in flood heights, additional threats to public safety, or extraordinary public expense,
 - ii. nor create nuisances, cause fraud on, or victimize the public, or conflict with any other applicable state or local bylaws and regulations.
8. A complete record of all variance requests and related actions shall be maintained by the Town of Wilmington. In addition, a report of all variances granted during the year for properties within the Special Flood Hazard Area and properties insured by the National Flood Insurance Program, shall be included in the annual report to the FEMA.

Notwithstanding any of the above, however, all structures shall be designed and constructed so as to have the capability of resisting the one-percent (1%) annual chance flood.

NOTE: In granting a variance for a property within the Special Flood Hazard Area or insured by the National Flood Insurance Program, municipalities are held to the standard provided in 44 CFR 60.6. If a variance is granted erroneously, a municipality remains liable for failing to meet the minimum standards of the National Flood Insurance Program.

611. Definitions

“Accessory Structure” means a structure which is: 1) detached from and clearly incidental and subordinate to the principal use of or structure on a lot, 2) located on the same lot as the principal structure or use, and 3) clearly and customarily related to the principal structure or use. For residential uses these include, but may not be limited to garages, garden and tool sheds, and playhouses.

“Area of Special Flood Hazard” is synonymous in meaning with the phrase “special flood hazard area” for the purposes of these regulations.

“Base Flood” means the flood having a one percent chance of being equaled or exceeded in any given year (also referred to as the “100-year flood” or one-percent (1%) annual chance flood).

“Base flood discharge” is the volume of water resulting from a Base Flood as it passes a given location within a given time, usually expressed in cubic feet per second (cfs).

“Base Flood Elevation” (BFE) is the elevation shown on the Flood Insurance Rate Map (FIRM) for Zones AE, AH, A1-30 that indicates the water surface elevation resulting from a flood that has a 1-percent or greater chance of being equaled or exceeded in any given year.

“Basement” is any area of the building having its floor below ground level on all sides.

“Buffer” means an undisturbed area consisting of trees, shrubs, ground cover plants, duff layer, and generally uneven ground surface that extends a specified distance horizontally across the surface of the land from the mean water level of an adjacent lake or from the top of the bank of an adjacent river or stream.

“Building” is a combination of materials to form a permanent structure having walls and a roof. Included shall be all manufactured homes and trailers to be used for human habitation.

“Channel” means an area that contains continuously or periodically flowing water that is confined by banks and a streambed.

“Channel width” (or bankfull width) is the width of a stream channel when flowing at a bankfull discharge. The bankfull discharge is the flow of water that first overtops the natural banks. This flow occurs, on average, once every 1 to 2 years.

“Community” means any State or area political subdivision thereof, or any Indian tribe or authorized tribal organization, which has authority to adopt and enforce floodplain management regulations for the areas within its jurisdiction.

“Critical facilities” - includes police stations, fire and rescue facilities, hospitals, shelters, schools, nursing homes, water supply and waste treatment facilities, and other structures the municipality identifies as essential to the health and welfare of the population and that are especially important following a disaster. For example, the type and location of a business may raise its status to a Critical Facility, such as a grocery store or gas station.

“Designated center” means a downtown, village center, new town center, growth center, or neighborhood development area designated pursuant to 24 V.S.A. Chapter 76A.

“Development” means any human-made change to improved or unimproved real estate, including but not limited to the construction, reconstruction, renovation, repair, expansion, or alteration of buildings or other structures, the placement of manufactured homes; streets, and other paving; utilities; filling, grading and excavation; mining; dredging; drilling operations; storage of equipment or materials; and the subdivision of land.

“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 municipality.

“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 manufactured 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 any placed material that changes the natural grade, increases the elevation, or diminishes the flood storage capacity at the site.

“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 the official map of a municipality, on which the Federal Emergency Management Agency has delineated both the special flood hazard areas and the risk premium zones applicable to the municipality.

“Flood Insurance Study” (FIS) means an examination, evaluation and determination of flood hazards and, if appropriate, the corresponding water surface elevations or an examination, evaluation and determination of mudslide (i.e., mudflow) and/or flood related erosion hazards.

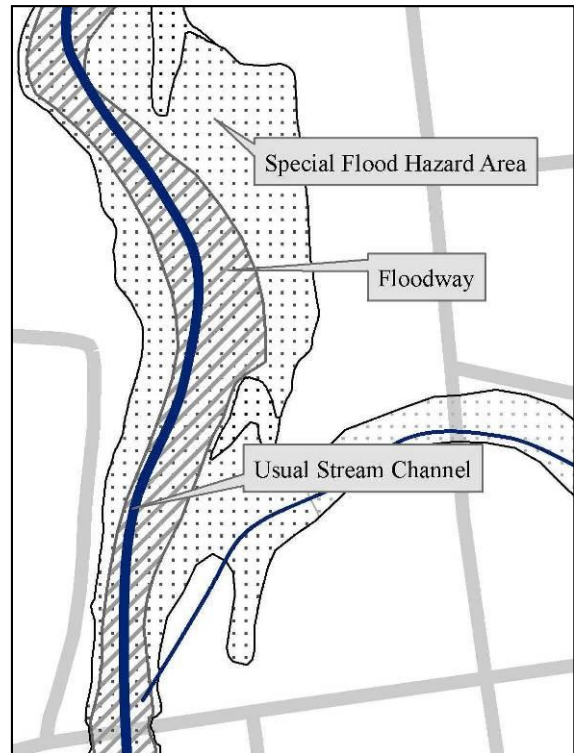
“Floodplain or flood-prone area” means a relatively flat or low land area which is subject to partial or complete inundation from an adjoining or nearby stream, river or watercourse; and/or any area subject to the unusual and rapid accumulation of surface waters from any source.

“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.

“Fluvial Erosion” is erosion caused by streams and rivers. Fluvial erosion can be catastrophic when a flood event causes a rapid adjustment of the stream channel size and/or location.

“Functionally dependent use” means a use which cannot perform its intended purpose unless it is located or carried out in close proximity to water.



“Highest Adjacent Grade” is 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 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.

“Identified Floodplain Area” is an umbrella term that includes all of the areas within which the municipality has selected to enforce floodplain regulations. It will always include the area identified as the Special Flood Hazard Area on the Flood Insurance Rate Maps and Flood Insurance Study, but may include additional areas identified by the municipality. See Section IV.A of this bylaw for what areas the community has included in the Identified Floodplain Area.

“Letter of Map Amendment” (LOMA) is an official amendment, by letter from FEMA, to an effective National Flood Insurance Program map. A LOMA establishes a property's location in relation to the Special Flood Hazard Area. LOMAs are usually issued because a property has been inadvertently mapped as being in the floodplain, but a licensed engineer or surveyor is able to show that the property or structure is actually above the base flood elevation.

“Lowest floor” means the lowest floor of the lowest enclosed area, including basement. An unfinished or flood resistant partially enclosed area, used solely for parking of vehicles, building access or incidental storage in an area other than a basement area is not considered a building's lowest floor provided that such enclosure is not designed and built so that the structure in violation of the applicable non-elevation design requirements of this bylaw.

“Manufactured home” (or Mobile 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” is a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

“Minor repair” is the replacement of existing work with equivalent materials for the purpose of its routine maintenance and upkeep, but not including the cutting away of any wall, partition or portion thereof, the removal or cutting of any structural beam or bearing support, or the removal or change of any required means of egress, or rearrangement of parts of a structure affecting the exitway requirements; nor shall minor repairs include addition to, alteration of, replacement or relocation of any standpipe, water supply, sewer, drainage, drain leader, gas, oil, waste, vent, or similar piping, electric wiring, mechanical or other work affecting public health or general safety.

“New construction” means structures for which the start of construction commenced on or after *[effective start date of this floodplain management bylaw]* and includes any subsequent improvements to such structures. Any construction started after May 1, 1978 and before *[effective start date of this floodplain management bylaw]* is subject to the bylaw in effect at the time the permit was issued, provided the start of construction was within 180 days of permit issuance.

“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 most recent effective date of floodplain management regulations adopted by a community.

“Nonconforming structure” means a structure or part of a structure that does not conform to the present bylaws but was in conformance with all applicable laws, bylaws, and regulations prior to

the enactment of the present bylaws, including a structure improperly authorized as a result of error by the Zoning Administrator. Structures that were in violation of the flood hazard regulations at the time of their creation, and remain so, remain violations and are not nonconforming structures.

“Nonconforming use” means use of land or a structure that does not conform to the present bylaws but did conform to all applicable laws, bylaws, and regulations prior to the enactment of the present bylaws, including a use improperly authorized as a result of error by the Zoning Administrator. Uses that were in violation of the flood hazard regulations at the time of their creation, and remain so, remain violations and are not nonconforming uses.

“Nonconformity” means a nonconforming use, structure, lot, or parcel.

“Non-residential” means a commercial or mixed-use building where the primary use is commercial or non-habitational. This includes, but is not limited to: small businesses, churches, schools, farm buildings (including grain bins and silos), pool houses, clubhouses, recreational buildings, government buildings, mercantile structures, agricultural and industrial structures, and warehouses.

“Non-substantial improvement” means any reconstruction, rehabilitation, addition, or other improvement of a structure, of which the cost is less than 50 percent of the market value of the structure before the “start of construction” of the improvement.

“Person” means an individual, partnership, public or private association or corporation, firm, trust, estate, municipality, governmental unit, public utility or any other legal entity whatsoever, which is recognized by law as the subject of rights and duties.

“Post-FIRM Structure” is a structure for which construction or substantial improvement occurred after December 31, 1974 or on or after the effective date of the community’s first Flood Insurance Rate Map (FIRM), whichever is later, and, as such, would be required to be compliant with the regulations of the National Flood Insurance Program.

“Pre-FIRM Structure” is a structure for which construction or substantial improvement occurred on or before December 31, 1974 or before the effective date of the community’s first Flood Insurance Rate Map (FIRM), whichever is later, and, as such, would not be required to be compliant with the regulations of the National Flood Insurance Program.

“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.

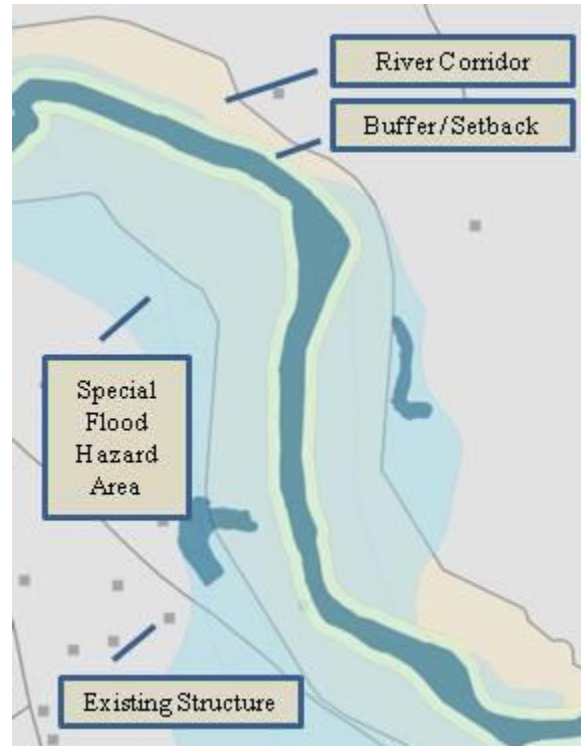
“Repetitive loss” is flood related damages sustained by a structure on two separate occasions during a 10-year period for which the cost of repairs at the time of each such flood event, on

average, equals or exceeds 25 percent of the market value of the structure before the damages occurred.

“Regulated Flood Hazard Areas” is a term that refers to all areas defined in Section IV.A of this bylaw and regulated by this bylaw, and is the total land to which these regulations apply. These hazard areas overlay any other existing zoning districts and the regulations herein are the minimum standards that must be met before meeting the additional standards applicable in the underlying district.

“River Corridor” means the land area adjacent to a river that is required to accommodate the dimensions, slope, planform, and buffer of the naturally stable channel and that is necessary for the natural maintenance or natural restoration of a dynamic equilibrium condition, as that term is defined in 10 V.S.A. § 1422, and for minimization of fluvial erosion hazards, as delineated by the Vermont Agency of Natural Resources (ANR) on the online Natural Resources Atlas.

“Small streams” are those perennial streams⁵ as delineated by the Vermont Agency of Natural Resources (ANR) on the online Natural Resources Atlas, with drainage areas of less than two square miles, which, because of their low sensitivity, small watershed size, steeper valley slope, and/or valley confinement, may attain their least erosive form within an area delineated as a simple 50-foot setback measured horizontally and perpendicularly from the top of each streambank. The river corridor for small streams constitutes the stream channel plus the 50-foot setback on each side.



“Special Flood Hazard Area” (SFHA) means an area in the floodplain subject to a 1 percent or greater chance of flooding in any given year. It is shown on the FIRM as Zone A, AO, A1-A30, AE, A99, or, AH.

“Start of construction” for purposes of floodplain management, determines the effective map or bylaw that regulated development in the Special Flood Hazard Area. The “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 and shall be completed within twenty-four (24) months after the date of issuance of the permit unless a time extension is granted, in writing, by the Zoning Administrator. 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

⁵ Based on the Vermont Hydrography Dataset (1:5000).

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 regulatory purposes under this bylaw, a walled and roofed building, as well as a manufactured home, and any related built systems, including gas or liquid storage tanks.

“Subdivision” is the division or re-division of a lot, tract, or parcel of land by any means into two or more lots, tracts, parcels or other divisions of land including changes in existing lot lines for the purpose, whether immediate or future, of lease, partition by the court for distribution to heirs, or devisees, transfer of ownership or building or lot development: Provided, however, that the subdivision by lease of land for agricultural purposes into parcels of more than ten acres, not involving any new street or easement of access or any residential dwelling, shall be exempted.

“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 reconstruction, rehabilitation, addition, or other improvement of a structure, of which the cost 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”.

“Top of Bank” means that vertical point along a stream bank where an abrupt change in slope is evident. For streams in wider valleys it is the point where the stream is generally able to overflow the banks and enter the floodplain. For steep and narrow valleys, it will generally be the same as the top of slope.

“Variance” means a grant of relief by a community from the terms of a floodplain management regulation.

“Violation” means the failure of a structure or other development to be fully compliant with this bylaw. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in 44 CFR § 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.