

**SECTION XXIX SHORELAND PROTECTION DISTRICT (OVERLAY)** (Added March 2003)**AUTHORITY**

This Section is enacted in accordance with the provisions of RSA 674:16-17 and RSA 674:20-21.

**I. PURPOSE**

Pursuant to RSA 674:16-21 the Town of Newton hereby adopts the Shoreland Protection District and accompanying regulations in order to protect and promote public health, resource conservation and the general welfare and to:

- a) Protect, maintain and enhance the water quality of ponds, rivers and their tributaries in the Town of Newton, and to ensure their continued availability as a resource and potential use as a public water supply;
- b) Conserve and protect aquatic and terrestrial habitat associated with pond and river areas;
- c) Preserve and enhance those recreational and aesthetic values associated with the natural shoreline and river environment;
- d) Encourage those uses that can be appropriately located adjacent to shorelines.

**II. DISTRICT BOUNDARIES**

The Newton Shoreland Protection District is defined to include all of the following:

- a) The areas of land within 150 feet horizontal distance of the shoreline of Country Pond.
- b) The areas of land within 100 feet horizontal distance of the seasonal high water level of all brooks and streams within the Town which appear on U.S.G.S. 7.5" (scale 1:24000) quadrangle maps for the Town of Newton, as revised.

**III. PERMITTED USES**

The following uses are permitted under this Section:

- a) Any use otherwise permitted by the Zoning Ordinance and by State and Federal laws that does not involve the erection of a structure, and does not alter the surface configuration of the land by the addition of fill or by dredging, except as a common treatment associated with a permitted use, and provided that a buffer strip of natural vegetation 75 feet in width along Country Pond, and 50 feet in width elsewhere, be maintained between the area of use and the shoreline.
- b) Agriculture, including grazing, hay production, truck gardening, and silage production, provided that such use is shown not to cause significant increases in surface or groundwater contamination by pesticides or other toxic or hazardous substances and that such use will not cause or contribute to soil erosion and stream sedimentation.
- c) Forestry and tree farming to include the construction of access roads for said purpose. Within the Shoreland Protection District the cutting of trees shall be limited to fifty percent (50%) of live trees in a 20-year period.
- d) Wildlife habitat development and management.
- e) Recreational uses consistent with the purpose and intent of this Section.
- f) Conservation areas and nature trails.
- g) Water impoundment and the construction of well water supplies.

- h) Drainage ways to include streams, creeks, or other paths of normal runoff water and common agricultural land drainage.
- i) The construction of fences, footbridges, catwalks, and wharves only, provided:
  - 1) Said structures are constructed on posts or pilings so as to permit the unobstructed flow of water;
  - 2) Structures do not obstruct navigation on tidal creeks;
  - 3) The natural contour of the shoreline is preserved;
  - 4) The Planning Board has reviewed and approved the proposed construction.

**Conflicting Provisions.** In the event that the provisions of the Shoreland Protection District are found to conflict with other provisions of the Newton Zoning and Land Use Ordinance, the more restrictive shall apply.

**Effect on Lot Size.** Areas within the Shoreland Protection District may be considered as part of a minimum lot size normally required by the Zoning Ordinance and Subdivision Regulations of the Town of Newton.

**Special Exception for Lots of Record.** Upon application of the Board of Adjustment, a special exception shall be granted to permit the erection of a structure within the Shoreland Protection District provided that all of the following conditions are found to exist:

- a) The lot upon which an exception is sought was an official lot of record, as recorded in the Rockingham County Registry of Deeds, prior to the date on which this amendment was posted and published in the Town.
- b) The use for which the exception is sought cannot feasibly be carried out on a portion or portions of the lot which are outside the Shoreland Protection District.
- c) Due to the provisions of the Shoreland Protection District, no reasonable and economically viable use of the lot can be made without the exception.
- d) The design and construction of the proposed use will, to the extent practical, be consistent with the purpose and intent of this Section.

#### IV. CONDITIONAL USES

A Conditional Use Permit may be granted by the Planning Board (RSA 674:21 II) for the construction of roads and other access ways, and for pipelines, power lines, and other transmission lines provided that all of the following conditions are found to exist:

- a) The proposed construction is essential to the productive use of land not within the Shoreland Protection District.
- b) Design and construction methods will be such as to minimize detrimental impact upon the Shoreland Protection District.
- c) The proposed construction design of power lines, pipelines, or other transmission lines includes provisions for restoration of the site as nearly as possible to its original grade and condition.
- d) No alternative route which does not cross a Shoreland Protection District nor has less detrimental

impact on the Shoreland Protection District is feasible.

- e) Economic advantage alone is not reason for proposed construction.

Prior to the granting of a Conditional Use Permit under this Section, the applicant shall agree to submit a performance security to the Board of Selectmen. The Security shall be submitted in a form and amount, with surety and conditions satisfactory to the Selectmen and approved by Town Counsel to ensure that the construction has been carried out in accordance with the approved design. The Security shall be submitted and approved prior to issuance of any permit authorizing construction.

The Planning Board may require the applicant to submit an environmental impact assessment when necessary to evaluate an application made under this Section. The cost of this assessment shall be borne by the applicant. The Planning Board may also assess the applicant reasonable fees to cover the costs of other special investigative studies and for the review of documents required by particular applications.

**SECTION XXX FLOODPLAIN DEVELOPMENT ORDINANCE** (Added March 2007, amended March 2009)

This ordinance, adopted pursuant to the authority of RSA 674:16 shall be known as the Town of Newton NH Floodplain Development Ordinance. The regulations in this ordinance shall overlay and supplement the regulations in the Town of Newton, NH Zoning Ordinance, and shall be considered part of the Zoning Ordinance for purposes of administration and appeals under state law. If any provisions of this ordinance differs or appears to conflict with any provision of the Zoning Ordinance or other ordinance or regulation, the provision imposing the greater restriction or more stringent standard shall be controlling.

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

**Section 1** DEFINITION OF TERMS

The following definitions shall apply only to this Floodplain Development Ordinance, and shall not be affected by the provisions of any other ordinance of the Town of Newton, NH.

1. **Area of Special Flood Hazard:** is the land in the floodplain within the Town of Newton, NH subject to a 1 percent or greater chance of flooding in any given year. The area is designated on the FIRM as Zones A and AE. (Amended March 2009)
2. **Base Flood:** means the flood having a one-percent possibility of being equaled or exceeded in any given year.
3. **Basement:** means any area of a building having its floor sub grade on all sides.
4. **Building:** see **Structure.**
5. **Development:** means any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation, or drilling operations or storage of equipment or materials. (Amended March 2009)
6. **FEMA:** means the Federal Emergency Management Agency.
7. **Flood or Flooding:** means a general and temporary condition of partial or complete inundation of normally dry land areas from:
  - a. The overflow of inland or tidal waters, or
  - b. The unusual and rapid accumulation or runoff of surface waters from any source.

8. Flood Insurance Rate Map: (FIRM) means the official map incorporated with this ordinance, on which FEMA has delineated both the special flood hazard areas and the risk premium zones applicable to the Town of Newton, NH.
9. Flood Insurance Study: (FIS) means an examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations, or an examination, evaluation and determination of mudslide (i.e. mudflow) and/or flood-related erosion hazards. (Added March 2009)
10. Floodplain or Flood-prone area: means any land area susceptible to being inundated by water from any source (see definition of Flooding).
11. Flood proofing: means any combination of structural and non-structural additions, changes, or adjustments to structures that reduce or eliminate flood damage to real estate or improved real property, water and sanitation facilities, structures and their contents.
12. Floodway: see Regulatory Floodway
13. Functionally dependent use: means a use, which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking and port facilities that are necessary for the loading/unloading of cargo or passengers, and ship building/repair facilities but does not include long-term storage or related manufacturing facilities.
14. Highest adjacent grade: means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.
15. Historic Structure: means any structure that is:
  - a. Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register,
  - b. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historic 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.
16. Lowest Floor: means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a buildings' lowest floor; provided, that such an enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this ordinance.
17. Manufactured Home: means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. For floodplain management purposes the term "manufactured home" includes park trailers, travel trailers, and other similar vehicles placed on site for greater than 180 consecutive days. This includes manufactured homes located in a manufactured home park or subdivision. (Amended March 2009)

18. Manufactured home park or subdivision: means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale. (Added March 2009)
19. Mean sea level: means the National Geodetic Vertical Datum (NGVD) of 1929 or other datum, to which base flood elevations shown on a community's Flood Insurance Rate Map is referenced.
20. New Construction: means, for the purposes of determining insurance rates, structures for which the start of construction commenced on or after the effective date of an initial FIRM or after December 31, 1974, whichever is later, and includes any subsequent improvements to such structures. For floodplain management purposes, *new construction* means structures for which the *start of construction* commenced on or after the effective date of a floodplain management regulation adopted by a community and includes any subsequent improvements to such structures. (Added March 2009)
21. 100-year flood: see base flood
22. Recreational Vehicle is defined as:
  - a. built on a single chassis;
  - b. 400 square feet or less when measured at the largest horizontal projection;
  - c. designed to be self-propelled or permanently towable by a light duty truck; and
  - d. designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel or seasonal use.
23. Regulatory floodway: means the channel of a river or other watercourses and the adjacent land areas that must be reserved in order to discharge the base flood without increasing the water surface elevation.
24. Special flood hazard area: See- Area of Special Flood Hazard (Amended March 2009)
25. Structure: means for floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank that is principally above ground, as well as a manufactured home.
26. Start of Construction: includes substantial improvements, and means the date the building permit was issued, provided the actual start of construction, repair reconstruction, placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on 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 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 part of the main structure.
27. 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.
28. Substantial Improvement: means any combination of repairs, reconstruction, alteration, or improvements to a structure in which the cumulative cost equals or exceeds fifty percent of the market value of the structure. The market value of the structure should equal:
  - a. the appraised value prior to the start of the initial repair or improvement, or
  - b. in the case of damage, the value of the structure prior to the damage occurring.

For the purposes of this definition, “substantial improvement” is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. This term includes structures which have incurred substantial damage, regardless of actual repair work performed. The term does not, however, include any project for improvements of a structure required to comply with existing health, sanitary, or safety code specifications, which are solely necessary to assure safe living conditions or any alteration of a “historic structure”, provided that the alteration will not preclude the structure’s continued designation as a “historic structure”.

29. Violation: means the failure of a structure or other development to be fully compliant with the community's flood plain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in Item V, Item VII(2b), or Item VII(3)(4) is presumed to be in violation until such time as the documentation is provided. (Added March 2009)
30. Water surface elevation: means the height, in relation to the National Geodetic Vertical Datum (NGVD) of 1929, (or other datum, where specified) of floods of various magnitudes and frequencies in the floodplains.

## Section 2

### PERMITS

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

## Section 3

### CONSTRUCTION REQUIREMENTS

The building inspector shall review all building permit applications for new construction or substantial improvements to determine whether proposed building sites will be reasonably safe from flooding. If a proposed building site is located in a special flood hazard area, all new construction or substantial improvements shall:

- a. be designed (or modified) and adequately anchored to prevent floatation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy,
- b. be constructed with materials resistant to flood damage,
- c. be constructed by methods and practices that minimize flood damages,
- d. be constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment, and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

## Section 4

### WATER AND SEWER SYSTEMS

Where new or replacement water and sewer systems (including on-site systems) are proposed in a special flood hazard area the applicant shall provide the Building Inspector with assurance that these systems will be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters, and on-site waste disposal systems will be located to avoid impairment to them or contamination from them during periods of flooding.

## Section 5

### CERTIFICATION

For all new or substantially improved structures located in special flood hazard areas, the applicant shall furnish the following information to the building inspector:

- a. the as-built elevation (in relation to NGVD) of the lowest floor (including basement) and include whether or not such structures contain a basement.

- b. if the structure has been flood proofed, the as-built elevation (in relation to NGVD) to which the structure was flood proofed.
- c. any certification of flood proofing.

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

#### Section 6 OTHER PERMITS

The Building Inspector shall not grant a building permit until the applicant certifies that all necessary permits have been received from those governmental agencies from which approval is required by federal or state law, including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334.

#### Section 7 WATERCOURSES

1. In riverine situations, prior to the alteration or relocation of a watercourse the applicant for such authorization shall notify the Wetlands Bureau of the New Hampshire Environmental Services Department and submit copies of such notification to the Building Inspector, in addition to the copies required by the RSA 482-A:3. Further, the applicant shall be required to submit copies of said notifications to those adjacent communities as determined by the Building Inspector, including notice of all scheduled hearings before the Wetlands Bureau and Zoning Board of Adjustment.
2. The applicant shall submit to the Building Inspector, certification provided by a registered professional engineer, assuring that the flood carrying capacity of an altered or relocated watercourse can and will be maintained.
3. The Building Inspector shall obtain, review, and reasonably utilize any floodway data available from Federal, State, or other sources as criteria for requiring that all development located in Zone A meet the following floodway requirement:

“No encroachments, including fill, new construction, substantial improvements, and other development are allowed within the floodway that would result in any increase in flood levels within the community during the base flood discharge.”
4. Along watercourses with a designated Regulatory Floodway no encroachments, including fill, new construction, substantial improvements, and other development are allowed within the floodway unless it has been demonstrated through hydrologic and hydraulic analysis performed in accordance with standard engineering practices that the proposed encroachment would not result in any increase in flood levels within the community during the base flood discharge. (Added March 2009)
5. Until a Regulatory Floodway is designated along watercourses, no new construction, substantial improvements, or other development (including fill) shall be permitted with Zone AE on the FIRM, unless it is demonstrated by the applicant that the cumulative effect of the proposed development, when combined with all existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community. (Added March 2009)

#### Section 8 SPECIAL FLOOD HAZARD AREAS

1. In Zone A the Building Inspector shall obtain, review, and reasonably utilize any 100-year flood elevation data available from any federal, state or other source including data submitted for development proposals submitted to the community (i.e. subdivisions, site approvals). (Amended March 2009)

2. The Building Inspector's 100-year flood elevation determination will be used as criteria for requiring in Zones A and AE that: (Amended March 2009)
- a. All new construction or substantial improvement of residential structures has the lowest floor (including basement) elevated to or above the 100-year flood elevation.
  - b. That all new construction or substantial improvements of non-residential structures have the lowest floor (including basement) elevated to or above the 100-year flood level;
- or together with attendant utility and sanitary facilities, shall:
1. be flood proofed so that below the 100-year flood elevation that structure is watertight with walls substantially impermeable to the passage of water.
  2. have structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy; and
  3. be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting the provisions of this section;
- c. All manufactured homes to be placed or substantially improved within special flood hazard areas shall be elevated on a permanent foundation such that the lowest floor of the manufactured home is at or above the one hundred (100) year flood elevation; and be securely anchored to resist floatation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable state and local anchoring requirements for resisting wind forces.
1. All recreational vehicles placed on sites within Zones A and AE shall either: (Amended March 2009)
    - a. be on the site for fewer than 180 consecutive days
    - b. be fully licensed and ready for highway use; or
    - c. meet all standards of Section 60.3 (b) of the National Flood Insurance Program Regulations and the elevation and anchoring requirements for manufactured homes in paragraph (c) (6) of Section 60.3.
- d. For all new construction and substantial improvements, fully enclosed areas below the lowest floor that are subject to flooding are permitted provided they meet the following requirements:
1. The enclosed area is unfinished or flood resistant, usable solely for the parking of vehicles, building access or storage,
  2. The area is not a basement,
- Shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwater. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or must meet or exceed the following minimum criteria: a minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided. The bottom of all openings shall be no higher than one (1) foot above grade. Openings may be equipped with screens, louvers, or other coverings or devices provided that they permit the automatic entry and exit of floodwater.

## Section 9

### VARIANCES AND APPEALS

- A. Any order, requirement, decision or determination of the Building Inspector made under this

ordinance may be appealed to the Zoning Board of Adjustment as set forth in RSA 676:5.

- B. If the applicant, upon appeal, requests a variance as authorized by RSA 674:33, I(b), the applicant shall have the burden of showing in addition to the usual variance standards under state law:
1. That the variance will not result in increased flood heights, additional threats to public safety, or extraordinary public expense.
  2. That if the requested variance is for activity within a designated regulatory floodway, no increase in flood levels during the base flood discharge will result.
  3. That the variance is the minimum necessary, considering the flood hazard, to afford relief.
- C. The Zoning Board of Adjustment shall notify the applicant in writing that: (i) the issuance of a variance to construct below the base flood level will result in increased premium rates for flood insurance up to amounts as high as twenty-five dollars (\$25) for one hundred dollars (\$100) of insurance coverage and (ii) such construction below the base flood level increases risks to life and property. Such notification shall be maintained with a record of all variance actions.
- D. The community shall:
1. maintain a record of all variance actions, including their justification for their issuance, and
  2. report such variances issued in its annual or biennial report submitted to FEMA's Federal Insurance Administrator.