

Changes to Henniker’s Regulations related to Floodplain Development in reference to the National Flood Insurance Program

The following are the changes that were identified during a review by the NH Office of Planning and Development on August 17, 2023, of *Henniker’s Zoning Ordinance, Site Plan Review Regulations, and Subdivision Regulations*.

Results of our review include:

- Amendments to Henniker’s regulations included in the Town’s Zoning Ordinance.
- Amendments to Henniker’s Site Plan Review Regulations.
- Henniker’s Subdivision Regulations include the required language. No amendments have been provided.

Once any changes have been adopted, please send a copy (electronically) to Alvina Snegach at the NH Office of Planning & Development at alvina.snegach@livefree.nh.gov. If there are any questions of this document, please contact our office at 603-271-1755 or by email as noted above.

Please note that the following text is for review purposes only and should be used as a reference to revise your existing regulations. Any revisions should be made in your source document. It is strongly recommended that the community review these revisions in comparison with the community’s existing regulations for spelling, grammar, accuracy, and clarity.

(~~strikethrough text~~ means delete text, **highlighted text** means add text).

Floodplain Development

[Amended 2-16-10]

133-99 Purpose

The following regulations 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 Merrimack, NH dated April 19, 2010 or as amended, together with the associated Flood Insurance Rate Maps dated April 19, 2010 or as amended, which are declared to be part of this ordinance and are hereby incorporated by reference.

133-100 Definition of terms

As used in this article, the following terms shall have the meanings indicated:

AREA OF SPECIAL FLOOD HAZARD — The land in the floodplain within a community subject to a one-percent or greater chance of flooding in any given year. The area is designated as Zone A and AE on the Flood Insurance Rate Map.

BASE FLOOD — The flood having a one-percent chance of being equaled or exceeded in any given year.

“Base Flood Elevation” (BFE) means the elevation of surface water resulting from the

“base flood.”

BASEMENT — Any area of the building having its floor subgrade (below grade level) on all sides.

BUILDING — See "structure."

DEVELOPMENT — Any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.

FLOOD or FLOODING — A general and temporary condition of partial or complete inundation of normally dry land areas from:

- A. The overflow of inland or tidal waters.
- B. The unusual and rapid accumulation or runoff of surface waters from any source.

FLOOD ~~Insurance~~ ELEVATION STUDY — 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.

FLOOD INSURANCE RATE MAP (FIRM) — An official map of a community on which the Federal Emergency Management Agency has delineated both the special hazard areas and the risk premium zones applicable to the community.

~~**FLOOD INSURANCE STUDY** — See "flood elevation study."~~

Flood Opening means an opening in a foundation or enclosure wall that allows automatic entry and exit of floodwaters. See FEMA “Technical Bulletin 1, Openings in Foundation Walls and Walls of Enclosures.”

FLOODPLAIN or FLOOD-PRONE AREA— Any land susceptible to being inundated by water from any source. (See definition of "flooding.")

FLOODPROOFING — Any combination of structural and nonstructural additions, changes or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

FLOODWAY — See "regulatory floodway."

~~**FUNCTIONALLY DEPENDENT USE** — 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 facilities, port facilities that are necessary for the loading and unloading of cargo or passengers and shipbuilding and ship repair facilities but does not include long-term storage or related manufacturing facilities.~~

HIGHEST ADJACENT GRADE — The highest natural elevation of the ground surface prior to construction next to the proposed walls of the structure.

HISTORIC STRUCTURE — Any structure that is: [Added 3-11-1982]

- 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 place;
- 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:
 - 1. By the approved state program as determined by the Secretary of the Interior, or
 - 2. Directly by the Secretary of the Interior in states without approved programs.

LOWEST FLOOR — The lowest floor of the enclosed area (including basement). An unfinished or flood-resistant enclosure, usable solely for parking vehicles, building access or storage in an area other than basement area is not considered a building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this chapter.

MANUFACTURED HOME — 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" also includes park trailers, travel trailers and other similar vehicles placed on a site for greater than 180 consecutive days. This includes manufactured homes located in a manufactured home park or subdivision.

MANUFACTURED HOME PARK OR SUBDIVISION — A parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

MEAN SEA LEVEL— For purposes of the National Flood Insurance Program, the National Geodetic Vertical Datum (NGVD) of 1929, **North American Vertical Datum (NAVD) of 1988**, or other datum, to which base flood elevations shown on a community's Flood Insurance Rate Map are referenced.

NEW CONSTRUCTION — 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 structure 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.

ONE HUNDRED YEAR FLOOD — See "base flood."

RECREATIONAL VEHICLE — A vehicle that is built on a single chassis, is 400 square feet or less when measured at the largest horizontal projection, is designed to be self-

propelled or permanently towable by a light duty truck and is designed primarily not for use as a permanent dwelling, but as temporary living quarters for recreational, camping, travel or seasonal use. [Added 3-9-1994]

REGULATORY FLOODWAY — The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height.

RIVERINE — Relating to, formed by or resembling a river (including tributaries), stream, brook, etc.

SPECIAL FLOOD HAZARD AREA — ~~An area having special flood, mudslide (i.e., mudflow) and/or flood-related erosion hazards, and shown on a FHBM or FIRM as Zone A, AO, AI 30, AE, A99, AH, VO, V1 30, VE, V, M or E.~~ (See "area of special flood hazard.")

START OF CONSTRUCTION — Includes substantial improvement, and means the date the building permit was issued, provided that 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 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.

STRUCTURE — For floodplain management purposes, a walled and roofed structure, including a gas or liquid storage tank, that is principally aboveground, as well as a manufactured home.

SUBSTANTIAL DAMAGE — 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% of the market value of the structure before the damage occurred. [Added 3-11-1992]

SUBSTANTIAL IMPROVEMENT— means any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the “start of construction” of the improvement. This term includes structures which have incurred “substantial damage,” regardless of the actual repair work performed. The term does not, however, include either:

a. Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions; or

b. Any alteration of a “historic structure,” provided that the alteration will not preclude the structure's continued designation as a “historic structure.”

~~Any combination of repairs, reconstruction, alteration or improvements to a structure in which the cumulative cost equals or exceeds 50% of the market value of the structure. The market value of the structure should be the appraised value of the structure prior to the start of the initial repair or improvement or, 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. The term does, however, include any project for improvement of a structure required to comply with existing health, sanitary or safety code conditions or any alteration of a structure listed on the National Register of Historic Places.~~

VIOLATION — 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 in Chapters 133- 104, 133-107(B2), 133-106(C) or 133-106(D) is presumed to be in violation until such time as that documentation is provided.

WATER SURFACE ELEVATION — The height, in relation to the National Geodetic Vertical Datum (NGVD) of 1929, **North American Vertical Datum (NAVD) of 1988**, (or other datum, where specified), of floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas.

133-101 Permit required

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

133-102 Review of building permit applications by Building Inspector

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 in a flood-prone area, all new construction and substantial improvements shall be:

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

133-103 Water and sewer systems

Where new and replacement water and sewer systems (including on-site systems) are proposed in flood-prone areas, the applicant shall provide the Building Inspector with assurance that new and replacement sanitary sewage systems will be designed to minimize or eliminate infiltration of floodwaters into the system and discharges from the

system into floodwaters, and on-site waste disposal systems will be located to avoid impairment to them or contamination from them during periods of flooding.

133-104 Maintenance of records of certification of flood-proofing and as-built elevations

The Building Inspector shall maintain for public inspection, and furnish upon request, any certification of flood-proofing and the as-built elevation (in relation to mean sea level) of the lowest floor (including basement) of all new or substantially improved structures and include whether or not structures contain a basement. If the structure has been flood-proofed, the as-built elevation (in relation to mean sea level) to which the structure was flood-proofed. This information must be furnished by the applicant.

133-105 Review for federal and state approvals

The Building Inspector shall review proposed developments to assure 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. It shall be the responsibility of the applicant to certify these assurances to the Building Inspector.

133-106 Alteration and relocation of watercourses

- A. 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 Department of Environmental Services and submit copies of such notification to the Building Inspector, in addition to the copies required by RSA 482-A:3. Further, the applicant shall be required to submit copies of said notification to those adjacent communities as determined by the Building Inspector, including notice of all scheduled hearings before the Wetlands Bureau.
- B. 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.
- C. Along watercourses with a designated regulatory floodway, no encroachment, including fill, new construction, substantial improvements and other development, are allowed within the floodway unless it has been demonstrated through hydrologic and hydraulic analyses 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.
- D. Until a Regulatory Floodway is designated along watercourses, no new construction, substantial improvements or other development (including fill) shall be permitted within Zone-AE on the FIRM, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community.
- E. Recreational vehicles placed on sites within Zones A and AE shall either be on the site for fewer than 180 consecutive days, be fully licensed, on wheels or jacking system, attached to the site only by quick disconnect type utilities and security devices, and have no permanently attached additions and ready for highway use, meet all standards of this ordinance ~~Section 60.3(b)(1) of the National Flood~~

~~Insurance Program Regulations~~ and the elevation and anchoring requirements for manufactured homes in ~~this ordinance Paragraph C(6) of Section 60.3.~~

- F. The Building Inspector shall obtain, review, and reasonably utilize any floodway data available from Federal, State, or other sources as criteria for requiring all development located in Zone A meet the following floodway requirement that no encroachments, including fill, new construction, substantial improvements, and other development are allowed within the floodway that would result in any increase in flood level within the community during the base flood discharge.

133-107 Determination of ~~base flood elevation~~ ~~one hundred year flood elevation~~

- A. In special flood hazard areas, the Building Inspector shall determine the ~~base flood elevation~~ ~~one hundred year flood elevation~~ in the following order of precedence according to the data available:
1. In Zone AE refer to the elevation provided in the community's Flood Insurance Study and accompanying FIRM.
 2. In Zone A, the Building Inspector shall obtain, review and reasonably utilize any ~~base flood elevation~~ ~~one hundred year flood elevation~~ data available from federal, state, development proposals submitted to the community (for example, subdivisions, site approvals, etc.) or other source. ~~Where a base flood elevation is not available or not known for Zone A, the base flood elevation shall be determined to be at least 2 feet above the highest adjacent grade.~~
- B. The Building Inspector's ~~base flood elevation~~ ~~one hundred year flood elevation~~ determination will be used as criteria for requiring in Zones AE and A that:
1. All new construction and substantial improvements of residential structures have the lowest floor (including basement) elevated to or above the ~~base flood elevation~~ ~~one hundred year flood level~~.
 2. That all new construction and substantial improvements of nonresidential structures have the lowest floor (including basement) elevated to or above the ~~base flood elevation~~ ~~one hundred year flood level~~ or, together with attendant utility and sanitary facilities, shall:
 - a. Be flood proofed so that below the ~~base flood elevation~~ ~~one hundred year flood elevation~~ the structure is watertight with walls substantially impermeable to the passage of water;
 - b. Have structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy; and
 - c. 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. No new manufactured homes shall be placed within special flood hazard areas. All existing manufactured homes to be 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 base flood level and be

securely anchored to resist flotation, 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.

- D. For all new construction and substantial improvements, fully enclosed areas below the lowest floor that are subject to flooding are permitted, provided that the enclosed areas meet the following requirements: the enclosed area is unfinished or flood resistant, usable solely for parking of vehicles, building access or storage; the area is not a basement; shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing entry and exit of floodwaters. 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 **flood** openings having a total net area of not less than one square inch for every foot of enclosed area subject to flooding shall be provided. The bottom of all openings may be equipped with screens, louvers or other covering or devices, provided that they permit the automatic entry and exit of floodwater.

133-108 Variances and appeals. [Added 3-11-1992]

- A. Any order, requirement, decision or determination of the Building Inspector made under this chapter 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 occur.
 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:
1. 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 \$25 for \$100 of insurance coverage; and
 2. Such construction below the base flood level increases risks to life and property
- D. The community shall:
1. Maintain a record of all variance actions, including the justification for their issuance; and
 2. Report such variances issued in its annual or biennial report submitted to FEMA's Federal Insurance Administrator.

The language below must be included in the Subdivision Regulations and Site Plan Review Regulations of communities that participate in the National Flood Insurance Program. This language appears to be missing from Henniker's Site Plan Review Regulations.

For subdivisions and site plans that involve land designated as "Special Flood Hazard Areas" (SFHA) by the National Flood Insurance Program (NFIP):

- A. The Planning Board shall review the proposed development to assure 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.
- B. The Planning Board shall require that all proposals for development greater than 50 lots or 5 acres, whichever is the lesser, include Base Flood Elevation (BFE) data within such proposals (i.e. floodplain boundary and 100-year flood elevation).
- C. The Planning Board shall require the applicant to submit sufficient evidence (construction drawings, grading and land treatment plans) so as to allow a determination that:
 - a. all such proposals are consistent with the need to minimize flood damage;
 - b. all public utilities and facilities, such as sewer, gas, electrical, and water systems are located and constructed to minimize or eliminate flood damage; and,
 - c. adequate drainage is provided so as to reduce exposure to flood hazards.