

## Article 6 Overlay Districts

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### 10.613 Overlay District Locations

- 10.613.10 The **Flood Plain District** (FP) consists of 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 County, NH” dated May 17, 2005 or as amended, together with associated Flood Insurance Rate Maps (FIRM) dated May 17, 2005 or as amended, which are declared to be part of this Ordinance and are hereby incorporated by reference. The Flood Plain District also includes all extended flood hazard areas as defined in Section 10.622.20, which shall be delineated on the basis of mapped or surveyed elevations.
- 10.613.20 The **Historic District** is identified on the Zoning Map.
- 10.613.30 The **Downtown Overlay District** (DOD) is identified on the Zoning Map.
- 10.613.40 The **Osprey Landing Overlay District** (OL) is identified on the Zoning Map.
- 10.613.50 The **Airport Approach Overlay District** (AA) consists of:
- (a) the Approach Zones shown on the Airport Obstruction Chart AOC 678 with the associated Obstruction Data Sheet ODS 678 (Surveyed October 1990, 1st Edition, for Pease Air Force Base, Portsmouth, NH), along with two detailed drawings (Exhibits 1 and 2), a legend (Exhibit 3), and the accompanying FAR Part 77.25, Civil Airport Imaginary Surfaces (Exhibit 4), all of which documents collectively are hereinafter called the “Airport Obstruction Chart” or “AOC”; and
  - (b) all the land within a distance of two miles from the airport reference point shown on the Pease International Tradeport Approach Map.
- 10.613.60 The **Highway Noise Overlay District** (HN) is identified on the Zoning Map.

### Section 10.620 Flood Plain District

#### 10.621 Purpose

- 10.621.10 The regulations in this Section shall apply to land in the Flood Plain District, and shall overlay and supplement the regulations of any underlying district.
- 10.621.20 If any provision of this Section differs or appears to conflict with any other provision of the Zoning Ordinance or other ordinance or regulation, the

provision imposing the greater restriction or more stringent standard shall be controlling.

## 10.622 Definitions

### 10.622.10 Rules of Construction

- 10.622.11 The definitions of words and terms in Section 10.622.20 apply to the Flood Plain District regulations (Section 10.620). When a term is used in the Flood Plain District Regulations and is defined in Section 10.622.20, it shall have that meaning, which shall supersede any definition in Article 15.
- 10.622.12 When a term is used in Section 10.620 and is not defined in Section 10.622.20, its meaning shall be determined in accordance with Article 15.
- 10.622.13 When a term appears in a section of the Zoning Ordinance other than Section 10.620, its meaning for the purpose of that section shall be determined in accordance with Article 15.

### 10.622.20 Terms Defined for the Flood Plain District

#### Area of special flood hazard

The land in the floodplain within the City of Portsmouth subject to a one percent or greater possibility of flooding in any given year. The area is designated on the FIRM as Zones A and AE.

#### 100-year flood

~~see Base flood.~~

#### Base flood

The flood having a one percent possibility of being equaled or exceeded in any given year.

#### Base flood elevation (BFE)

The water surface elevation having a one percent possibility of being equaled or exceeded in any given year as defined on the flood insurance rate map (FIRM) currently in effect.

#### Basement

Any area of a building having its floor subgrade on all sides.

#### Breakaway wall

~~A wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces without causing damage to the elevated portion of the building or supporting foundation.~~

Building

See structure in this Section.

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 operation or storage of equipment or materials.

Extended flood hazard area

Any contiguous area of land adjacent to a special flood hazard area and less than two feet above the base flood elevation in that special flood hazard area.

FEMA

The Federal Emergency Management Agency.

FIRM

See flood insurance rate map.

Flood or flooding

A general and temporary condition of partial or complete inundation of normally dry land areas from the overflow of inland or tidal waters or the unusual and rapid accumulation or runoff of surface waters from any source.

Flood insurance rate map (FIRM)

An official map, incorporated with this Ordinance, on which FEMA has delineated both the special flood hazard areas (SFHAs) and the Risk Premium Zones applicable to the City of Portsmouth.

Flood insurance study

An examination, evaluation, and determination of flood hazards and if appropriate, corresponding water surface elevations, or an examination and determination of mudslide or flood-related erosion hazards.

Flood plain or flood-prone area

Any land area susceptible to being inundated by water from any source.

Flood proofing

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 sanitation facilities, structures and their contents.

Floodway

See regulatory floodway.

Highest adjacent grade

The highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

Historic structure

Any structure that is:

- a. Listed individually in the National Register of Historic Places 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; or
- c. Individually listed on the New Hampshire State Register of Historic Places.

Lowest floor

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

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 connected to the required utilities, ~~including~~. For floodplain management purposes the term "manufactured home" includes park trailers, travel trailers, and other similar vehicles placed on site for greater than 180 days. This includes manufactured homes located in a manufactured home park or subdivision.

Manufactured home park or subdivision

For the purposes of the **Flood Plain District**, a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

Mean sea level

The National Geodetic Vertical Datum (NGVD) of 1929, North American Vertical Datum (NAVD) of 1988, or other datum, to which base flood elevations (BFE) shown on a community's FIRM are referenced.

New construction

A structure for which the start of construction commenced on or after the effective date of this flood plain management regulation and includes any subsequent improvements to such structure. ~~and 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.~~

Recreational vehicle

A vehicle that 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 temporary living quarters for recreational, camping, travel or seasonal use.

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. These areas are designated as floodways on the Flood Boundary and Floodway Map.

Special flood hazard area (SFHA)

The land in the flood plain within the City of Portsmouth subject to a one percent or greater possibility of flooding in any given year. The area is designated on the FIRM as Zones A, AE, AO, AH, AR, A99, V and VE. See Area of special flood hazard.

Start of construction (including substantial improvement)

The date on which 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.

- (a) 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 a manufactured home on a foundation.
- (b) “Permanent construction” does not include any of the following:
  - (1) land preparation, such as clearing, grading and filling;
  - (2) the installation of streets and/or walkways;
  - (3) excavation for a basement, footings, piers, or foundations or the erection of temporary forms;
  - (4) the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or part of the main structure.

Structure

For flood plain 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.

Substantial damage

Damage by flood of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

Substantial improvement

Any combination of repairs, reconstruction, additions, rehabilitation, alterations, or improvements to a structure in which the cumulative cost equals or exceeds 540 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 improvement 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.

#### Violation

The failure of a structure or other development to be fully compliant with the flood plain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required under this ordinance 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 flood plains.

## 10.623 Building Permits

- 10.623.10 All proposed development in a special flood hazard area shall require a building permit.
- 10.623.20 The Code Official shall review all building permit applications for new construction or substantial improvements to determine (a) whether the proposed building site will be in a special flood hazard area and (b) if so, that all new construction or substantial improvements will comply with the requirements of this section.
- 10.623.30 The Code Official 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.

## 10.624 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 Code Official 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.

## 10.625 Flood Information

- 10.625.10 For all new or substantially improved structures located in Zones A ~~or AE, A1-A30, AO or AH~~, the applicant shall furnish the following information to the Code Official:
- ~~(a) The as-built elevation (in relation to mean sea level) of the lowest floor (including basement), and whether or not the structure contains a basement;~~
  - ~~(b) If the structure has been flood proofed, the as-built elevation (in relation to mean sea level) to which the structure was flood proofed;~~
  - ~~(c) Any certification of flood proofing.~~
  - (a) A completed and certified copy of a FEMA Elevation Certificate that includes the as-built elevation (in relation to mean sea level) of the lowest floor of the structure and whether or not the structure has a basement.
  - (b) If a non-residential structure includes floodproofing, a completed and certified copy of the FEMA Floodproofing Certificate for Non-Residential Structures that includes the as-built elevation (in relation to mean sea level) to which the structure was floodproofed and certification of floodproofing.
- 10.625.20 The Code Official shall maintain the above information for public inspection and shall furnish such information upon request.

## 10.626 Watercourse Alteration, Relocation or Encroachment

- 10.626.10 In riverine situations, prior to the alteration or relocation of a watercourse the applicant for such authorization shall notify the Wetlands ~~Board~~Bureau of the New Hampshire ~~Department of~~ Environmental Services ~~Department~~ and submit copies of such notification to the Code Official in addition to the copies required by provisions of State law. Further, the applicant shall be required to submit copies of said notification to those adjacent communities as determined by the Code Official, including notice of all scheduled hearings before the Wetlands ~~Board~~Bureau.
- 10.626.20 ~~The applicant shall submit to the Code Official certification provided by a registered professional engineer assuring that the flood-carrying capacity of an altered or relocated watercourse can and will be maintained. The~~ Code Official 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.”

- 10.626.30 Along watercourses with a designated regulatory floodway, no encroachment, including fill, new construction, substantial improvement or other development, is allowed within the floodway that would result in any increase in flood levels within the community during the base flood discharge. In Zone A, the Code Official shall obtain, review, and reasonably utilize any floodway data available from Federal, State or other sources as criteria for requiring that development meet the floodway requirements of this section.
- 10.626.40 Along watercourses that have not had a regulatory floodway designated, no new construction, substantial improvement or other development (including fill) shall be permitted within Zone AE on the FIRM, unless it is demonstrated by the applicant that the cumulative effect on 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.

## 10.627 Determination of Base Flood Elevation

- 10.627.10 In a special flood hazard area (SFHA) the Code Official shall determine the base flood elevation in the following order of precedence according to the data available:

10.627.11 In Zone AE, refer to the elevation data provided in the community’s flood insurance study and accompanying FIRM;

10.627.12 In ~~an unnumbered Zone~~ A-zone, the Code Official shall obtain, review, and reasonably utilize any base 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);

10.627.13 ~~In Zone AO the base flood elevation is determined by adding the elevation of the highest adjacent grade to the depth number specified on the FIRM or if no depth number is specified on the FIRM at least 2 feet. In Zone A where a~~ base flood elevation is not available, the base flood elevation shall be at least two feet above the highest adjacent grade.



## 10.628 Construction Standards in Special Flood Hazard Areas and Extended Flood Hazard Areas

10.628.10 In Zones A, ~~AE, AH, AO and A99~~ and AE, any new construction or substantial improvement 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 damage; and
- (d) be constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment, and other service facilities that are designed and located so as to prevent water from entering or accumulating within the components during conditions of flooding.

10.628.20 Any new construction ~~or substantial improvement~~ of a residential structure shall have the lowest floor (including basement) elevated to ~~or at least two (2) feet~~ at least two (2) feet above the base flood elevation if in Zone A or AE, and to at least two (2) feet above the base flood elevation of the adjacent special flood hazard area if in an extended flood hazard area.

10.628.30 Any substantial improvement of a residential structure shall have the lowest floor (including basement) elevated to or above the base flood elevation if in Zone A or AE.

10.628.430 Any new construction ~~or substantial improvement~~ of a nonresidential structure shall have the lowest floor (including basement) elevated to ~~or at least two (2) feet~~ at least two (2) feet above the base flood elevation if in Zone A or AE, and to at least two (2) feet above the base flood elevation of the adjacent special flood hazard area if in an extended flood hazard area; or together with attendant utility and sanitary facilities, shall:

- (a) be floodproofed so that below two (2) feet above the base flood elevation in Zone A or AE, or below two (2) feet above the base flood elevation of the adjacent special flood hazard area in an extended flood hazard area, ~~the base 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.

10.628.50 Any substantial improvement of a nonresidential structure shall have the lowest floor (including basement) elevated to or above the base flood elevation if in Zone A or AE; or together with attendant utility and sanitary facilities, shall:

- (a) be floodproofed so that below the base flood elevation in Zone A or AE, 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.

10.628.~~46~~0 Any manufactured home to be placed or substantially improved within a special flood hazard area shall be elevated on a permanent foundation such that the lowest floor of the manufactured home is ~~at or at least two~~ (2) feet above the base 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;

10.628.~~57~~0 For any new construction or substantial improvement, fully enclosed areas below the lowest floor that are subject to flooding are permitted provided they meet the following requirements:

- (a) the enclosed area is unfinished or flood resistant, usable solely or the parking of vehicles, building access or storage;
- (b) the area is not a basement;
- (c) the area shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwater certified by a registered professional engineer or architect, or must meet or exceed the following minimum criteria:
  - (i) 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.
  - (ii) The bottom of all openings shall be no higher than one foot above grade.
  - (iii) Openings may be equipped with screens, louvers, or other coverings or devices provided that they permit the automatic entry and exit of floodwater.

~~10.628.60 — Any structure proposed to be located on a slope in a special flood hazard area Zones AH and AO shall include adequate drainage paths to guide flood waters around and away from the proposed structure.~~

10.628.780 Any recreational vehicle placed on a site within Zones AH, and AE for 180 or more consecutive days shall either:

- ~~(a) be fully licensed and ready for highway use, or~~
- (a) 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, or
- (b) meet all standards of ~~Section 60.3(b)(1) of the National Flood Insurance Program Regulations~~ Section 10.623.10 of this ordinance and the elevation and anchoring requirements for manufactured homes in ~~Section 60.3(c)(6) of the Regulations~~ Section 10.628.60 of this ordinance.

## 10.629 Variances and Appeals

10.629.10 Any order, requirement, decision or determination of the Code Official made under this Section 10.620 may be appealed to the Board of Adjustment as set forth in accordance with the provisions of State law.

10.629.20 If the applicant, upon appeal, requests a variance as authorized by the provisions of State law, the applicant shall have the burden of showing in addition to the usual variance standards under State law:

- (a) That the variance will not result in increased flood heights, additional threats to public safety, or extraordinary public expense;
- (b) 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; and
- (c) That the variance is the minimum necessary considering the flood hazard, to afford relief.

10.629.30 The Board of Adjustment shall notify the applicant in writing that:

- (a) The issuance of a variance to construct below the base flood elevation will result in increased premium rates for flood insurance up to amounts as high as \$25 for \$100 of insurance coverage; and
- (b) Such construction below the base flood elevation increases risks to life and property.

Such notification shall be maintained with a record of all variance actions.

- 10.629.40     The community shall:
- (a) Maintain a record of all variance actions, including their justification for their issuance, and
  - (b) Report such variances issued in its annual or biennial report submitted to FEMA's Federal Insurance Administrator.

## Article 15 Definitions

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- Section 10.1510 Rules of Construction  
 Section 10.1520 Terms With Specialized Applications  
 Section 10.1530 Terms of General Applicability

### Section 10.1510 Rules of Construction

- 10.1511 Unless otherwise expressly stated, the following words and terms shall have the meanings shown in this Article.
- 10.1512 When a term is defined both in this Article 15 and in another Article of this Ordinance, the definition in the other Article shall supersede the definition in Article 15. Examples include the definitions relating to Sexually-Oriented Businesses and Telecommunications Facilities in Article 5, and to the Flood Plain District and Airport Approach Overlay District in Article 6.
- 10.1513 Where terms are not defined in this Ordinance and are defined in the Building Code, such terms shall have the meanings ascribed to them therein.
- 10.1514 Where terms are not defined in this Ordinance or in the Building Code, such terms shall have ordinarily accepted meanings such as the context implies.

### Section 10.1520 Terms With Specialized Applications

- 10.1521 Terms that are used primarily in Section 10.620, Flood Plain District, are defined in Section 10.622, including:

<del>100-year flood</del>	Flood proofing
<del>Area of special flood hazard area</del>	Floodway
Base flood	Highest adjacent grade
Base flood elevation (BFE)	<del>Historic structure</del>
Basement	Lowest floor
<del>Breakaway wall</del>	Manufactured home
Building *	<del>Manufactured home park or subdivision</del>
Development	Mean sea level
<del>Extended flood hazard area</del>	New construction
FEMA	Regulatory floodway
FIRM	<del>Recreational vehicle</del>
Flood insurance rate map	Special flood hazard area
Flood insurance study	Start of construction
Flood or flooding	Structure *
Flood plain	Substantial damage
Flood-prone area	Substantial improvement *
	<del>Violation</del>
	Water surface elevation