

FLOOD HAZARD AREAS

Chapter 135

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**§ 135-22. Regulations to take precedence.****§ 135-23. Definitions.**

[HISTORY: Adopted by the Board of Selectmen of the Town of Rutland 7-6-1987.<sup>1</sup> Amendments noted where applicable.]

## GENERAL REFERENCES

Municipal Development Plan — See Ch. 155.  
Subdivision of land — See Ch. 185.

**§ 135-1. Statutory authority.**

To effect the purpose of 10 V.S.A. Chapter 32, and in accord with the Vermont Planning and Development Act, 24 V.S.A. Chapter 117, there are hereby established flood hazard area regulations for the Town of Rutland.

**§ 135-2. Purpose.**

It is the purpose of this chapter to promote the public health, safety and general welfare, to prevent increases in flooding caused by the uncontrolled development of lands in flood hazard areas and to minimize losses due to flooding by:

- A. Restricting or prohibiting uses that are dangerous to health, safety or property in times of flood or cause excessive increase in flood heights or velocities.
- B. Requiring that uses vulnerable to floods, including public facilities that serve such uses, be protected against flood damage at the time of initial construction.
- C. Protecting individuals from buying lands that are unsuitable for their intended purposes because of flood hazard.

<sup>1</sup> Editor's Note: The regulations also superseded former Ch. 135, Flood Hazard Areas, adopted by the ATM as Art. 17.

**§ 135-3. Applicability.**

This chapter shall apply to all development in areas the Town of Rutland identified as areas of special flood hazard on the National Insurance Program maps dated August 31, 1978. These maps are

(Cont'd on page 13503)

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adopted by reference and declared to be part of this chapter. No person shall commence development upon lands within these areas without first obtaining a flood hazard zoning permit in accordance with these regulations.

- A. Where available (i.e., Zones A1 through A30, AE and AH), the base flood elevations and floodway limits provided by the National Flood Insurance Program in the Flood Insurance Study and accompanying maps shall be used to administer the provisions of this chapter.
- B. In areas where base flood elevations and floodway limits have not been provided by the National Flood Insurance Program (i.e., Zone A), base flood elevation and floodway information available from state or federal agencies or other sources shall be obtained and reasonably utilized to administer the provisions of this chapter.

**§ 135-4. Interpretation of flood hazard area boundaries.**

The administrative officer shall determine the relationship of a proposed development to the area of special flood hazard, using, where available (i.e., Zones A1 through A30, AE and AH), the base flood elevations and floodway limits provided by the National Flood Insurance Program in the Flood Insurance Study and accompanying maps.

**§ 135-5. Permitted uses.**

The following open space uses shall be permitted within flood hazard areas to the extent that they are not prohibited by any other ordinance or regulation and provided that they do not require the erection of structures; storage of materials and equipment and importing fill from outside the flood hazard area; do not require the channel modification or relocation; do not obstruct flood flows; do not increase the flood level within the floodway during the occurrence of the base flood or increase off-site damage potential; do not propose the construction of water supply or sanitary sewer or on-site waste disposal systems:

- A. Agricultural uses, such as general farming, pasture, orchard, grazing, outdoor plant nurseries, truck farming and forestry.
- B. Recreation uses, such as parks, campgrounds, picnic grounds, tennis courts, golf courses, golf driving ranges, archery and shooting ranges, hiking and riding trails, hunting and fishing areas, game farms, fish hatcheries, wildlife sanctuaries, nature preserves, swimming area and boat launching sites.
- C. Residential uses, such as lawns, gardens, unpaved areas and play areas.

**§ 135-6. Conditional uses.**

Except for the permitted uses as defined by § 135-5, all other new construction or substantial improvements shall be permitted only upon the granting of a conditional use permit by the Board of Adjustment.

**§ 135-7. Zoning permit application procedure.**

- A. All zoning permit applications shall be submitted to the administrative officer, on forms furnished by him/her, who shall determine whether or not the proposed development is located within the flood hazard area by the procedure established in § 135-4.
- B. If the proposed use is a permitted use as defined in § 135-5, a permit shall be issued by the administrative officer.
- C. Requests for all other uses or appeals from the interpretation of the administrative officer will be referred to the Secretary of the Board of Adjustment.

**§ 135-8. Conditional use application submission requirements.**

Conditional use application submission requirements shall include:

- A. Two (2) copies of plans drawn to scale showing the nature, location, dimensions and elevations of the lot; roads, streams

and other physical features; and existing and proposed land contours.

- B. Existing and proposed structures, including the elevation of the lowest habitable floor, including the basement, and confirmation as to whether such structure contains a basement.
- C. Proposed fill and/or storage of materials.
- D. Proposed floodproofing measures and the level to which any structure will be floodproofed.
- E. The status of all necessary permits required by federal or state law.
- F. A description of the extent to which any watercourse will be altered or relocated as a result of the proposed development.
- G. Any clarifying or supplemental information and data necessary to pass upon the application.
- H. The relationship of the proposal to the location of the channel.
- I. The extent of the flood hazard area and the base flood elevation utilizing the best information available.
- J. For all subdivision and development which requires a permit under § 135-6 and which involves more than fifty (50) lots or five (5) acres, the base flood elevation for that portion that lies within Zone A.

**§ 135-9. Referral of applications to other agencies.**

- A. Upon receipt of an application and plans, the Board of Adjustment shall transmit one (1) copy to the Vermont Department of Water Resources in accordance with § 4409(c)(2)(A) of the Act.
- B. In accordance with § 4409(c)(2)(A) of the Act, no permit may be granted prior to the expiration of a period of thirty (30) days following the submission of a report to the Vermont Department of Water Resources under Subsection A above.

- C. In riverine situations, the Board of Adjustment shall notify adjacent communities and the Vermont Department of Water Resources prior to approval of any alteration or relocation of a watercourse and shall submit copies of such notification to the FIA Administrator. In granting its approval, the Board shall be assured that the flood-carrying capacity of the altered or relocated portion of any watercourse is maintained.

**§ 135-10. Consideration by Board of Adjustment.**

In reviewing each application, the Board of Adjustment shall consider:

- A. The danger to life and property due to increased flood heights or velocities caused by encroachments.
- B. The danger that materials may be swept onto other lands or downstream to the injury of others.
- C. The proposed water supply and sanitation systems and the ability of these systems to prevent disease, contamination and unsanitary conditions under conditions of flooding.
- D. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owners.
- E. The importance of the services provided by the proposed facility to the community.
- F. The necessity to the facility of a waterfront location.
- G. The availability of alternative locations not subject to flooding for the proposed use.
- H. The compatibility of the proposed use with existing development and development anticipated in the foreseeable future.
- I. The relationship of the proposed use to the Town Plan insofar as it has been developed.
- J. The safety of access to the property, in times of flood, for ordinary and emergency vehicles.



- K. The expected heights, velocity, duration, rate of rise and sediment during and after flooding.
- L. The costs of providing governmental and public facilities and services during and after flooding.
- M. Such other factors as are relevant to the purposes of this chapter.

**§ 135-11. Conditions attached to conditional use applications.**

- A. In all flood hazard areas (i.e., numbered and unnumbered A Zones), the Board of Adjustment shall require, as a condition of approval, that:
  - (1) All development shall be designed to minimize flood damage to the proposed development and public facilities and utilities and to provide adequate drainage to reduce exposure to flood hazards.
  - (2) Structures shall be designed or modified and adequately anchored to prevent flotation, collapse or lateral movement of the structure during the occurrence of the base flood, constructed with materials resistant to flood damage, constructed by methods and practices that minimize flood damage and constructed with the electrical, air-conditioning, heating, ventilation, plumbing 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.
  - (3) The flood-carrying capacity within any altered or relocated portion of a watercourse shall be maintained.
  - (4) New and replacement water supply and sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems and discharges from the systems into floodwaters.
  - (5) On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

- (6) New and replacement manufactured homes shall be elevated on properly constructed fill such that the top of the fill (the pad) under the entire manufactured home is above the base flood elevation.
- (7) Development within the floodway is prohibited unless a registered professional engineer certifies that the proposed development will not result in any increase in flood levels during the occurrence of the base flood.
- (8) The lowest floor, including the basement, of all new residential buildings shall be at or above the base flood elevation.
- (9) New nonresidential buildings and existing buildings to be substantially improved for nonresidential purposes shall either meet the requirements of Subsection A(8) or be designed to be watertight below the base flood elevation with walls substantially impermeable and with structural components having the capacity of buoyancy. A permit for a building proposed to be floodproofed shall not be issued until a registered 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.
- (10) Junkyards and storage facilities for floatable materials, chemicals, explosives, flammable liquids or other hazardous or toxic materials, are prohibited within the floodway. These facilities may be permitted outside of the floodway, provided that the area is filled to at least one (1) foot above the base flood elevation.
- (11) All new construction and substantial improvements with fully enclosed areas below the lowest floor that are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a professional engineer or architect or meet or exceed the following minimum criteria:

- (a) 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.
- (b) The bottom of all openings shall be no higher than one foot above grade.
- (c) Openings may be equipped with screens, louvers, valves or other coverings or devices, provided that they permit the automatic entry and exit of floodwaters.

B. The Board may attach additional conditions as are necessary to meet the purpose of this chapter.

**§ 135-12. Administration and enforcement.**

- A. The provisions of this chapter shall be administered and enforced as provided by 24 V.S.A., Chapter 117, §§ 4441 through 4448.
- B. The administrative officer shall:
  - (1) Assure that all necessary permits are obtained from those governmental agencies from which approval is required by federal or state law.
  - (2) Maintain a record of the elevation, in relation to mean sea level, of the lowest habitable floor, including the basement, of all new or substantially improved structures, and whether or not such structures contain a basement.
  - (3) Maintain a record of the elevation, in relation to mean sea level, to which the structure was floodproofed.

**§ 135-13. Appeals.**

An interested person, as defined in 24 V.S.A. § 4464(b), may appeal a decision of the Board of Adjustment to the Superior Court in accordance with the provisions of 24 V.S.A. § 4471.

**§ 135-14. Variances.**

- A. Variances shall be granted by the Board of Adjustment only:
- (1) In accordance with the provisions of 24 V.S.A. § 4468.
  - (2) Upon determination that the variance will not result in increased flood heights, threats to public safety or extraordinary public expense; create nuisances; cause fraud on or victimization of the public; or conflict with existing local laws or ordinances.
- B. The Secretary of the Board of Adjustment shall notify the applicant that:
- (1) The issuance of a variance to construct a structure 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.
  - (2) Such construction below the base flood elevation increases risk to life and property.
  - (3) The structure does not conform to the bylaws pertaining thereto and will be maintained at the risk of the owner.
- C. The Secretary of the Board of Adjustment shall maintain a record of all variance actions, including justification for their issuance.

**§ 135-15. (Reserved)<sup>2</sup>****§ 135-16. Time for acting on application.**

- A. The Board of Adjustment shall hold a properly warned hearing within 30 days of receiving an application and shall act on such application within 30 days of the final hearing, subject to the limitations of § 135-4 of this chapter.
- B. A copy of the public notice shall be mailed to the applicant at least 15 days prior to the hearing date.

**§ 135-17. Issuance of permit.**

Upon granting a permit, the Board of Adjustment shall send to the applicant, by certified mail, a copy of the decision. Copies of the decision also shall be mailed to every person appearing and having been heard at the hearing, to the administrative officer, who shall forthwith issue a permit and to the Town Clerk as a part of the public records.

**§ 135-18. Effective date of permits.**

- A. A permitted use permit shall take effect 15 days from the date of issuance.
- B. Conditional use permits shall take effect upon adjudication by the Board of Adjustment.

**§ 135-19. Fees.**

The Board of Selectmen shall establish such fees as may be necessary for the filing of notices and the processing of hearings and action thereon. All such fees shall be paid to the Secretary

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<sup>2</sup> Editor's Note: Former § 135-15, Nonconforming structures, was repealed 12-9-1996.

of the Board of Adjustment upon application for a conditional use permit under this chapter.

**§ 135-20. Disclaimer of liability.**

This chapter does not imply that land outside the areas of special flood hazard or land uses permitted within such districts will be free from flooding or flood damages. This chapter shall not create liability on the part of the Town of Rutland or any town official or employee thereof for any flood damages that result from reliance on this chapter or any administrative decisions lawfully made thereunder.

**§ 135-21. Severability.**

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

**§ 135-22. Regulations to take precedence.**

The provisions of this chapter shall take precedence over any conflicting and less restrictive local laws.

**§ 135-23. Definitions.**

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

**ADMINISTRATOR** — The Federal Insurance Administration.

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

**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.

FIA — The Federal Insurance Administration.

FLOODPROOFING — Those methods that are adequate to withstand the flood depth, pressures, velocities, impact and uplift forces and other factors associated with the one-hundred-year flood.

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 one foot.

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

SUBSTANTIAL IMPROVEMENT — Any repair, reconstruction or improvement of a structure, the cost of which equals or exceeds 50% of the market value of a structure either before the improvement or repair is started or, if the structure has been damaged and is being restored, before the damage occurred. The term does not, however, include either any project for improvement of a structure to comply with existing state or local health, sanitary or safety code specifications which are solely necessary to assure safe living conditions or any alteration of a structure listed on the National Register of Historic Places or a State Inventory of Historic Places.