



# **CITY OF BARRE**

## **FLOOD HAZARD AREA REGULATIONS**

**Version Date: November 4, 2024**

Department of Planning, Permitting & Assessing  
City of Barre  
6 North Main Street  
Barre, VT 05641

802-476-0245

## **HISTORY OF THE FLOOD HAZARD AREA REGULATIONS**

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## **HISTORY OF MAP AMENDMENTS**

### **ORIGINAL MAPS (FIRM & FBFM)**

January 17, 1985

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## **Section 1. General Provisions**

### **1.01 Enactment**

- (A) These flood hazard area regulations, set forth in this text and the official Flood Hazard Area Maps on record at the City of Barre Clerk's Office, are hereby established as authorized in §4402(1) and §4402(9) and have been enacted in accordance with the provisions of §4424(2) of the Vermont Municipal and Regional Planning and Development Act (Title 24, Chapter 117 of the Vermont Statutes Annotated (V.S.A.)) hereinafter referred to as "the Act".

### **1.02 Establishment and Incorporation of the Flood Hazard Area Maps**

- (A) The most recent City of Barre Flood Insurance Rate Maps, hereinafter referred to as the FIRM maps (published by the Federal Emergency Management Agency (hereinafter FEMA)), and the City of Barre Flood Boundary and Floodway Maps, hereinafter referred to as the FBFM maps (published by FEMA), and any corresponding Flood Insurance Studies are hereby adopted by reference and declared to be part of these regulations. Hereinafter these maps shall be referred to as the City of Barre Official Flood Hazard Area Maps. Regardless of the existence of copies which may be made from time to time, the Official Flood Hazard Area Maps located at the City of Barre Clerk's Office shall be the final authority as to the official status of all flood hazard areas in the City of Barre.
- (B) Any amended FIRM maps and flood insurance studies shall become effective on the effective date printed on the maps and studies. Any other official amendments to these maps (e.g. Letters of Map Amendments) shall be effective on the date printed on the amendment. Automatic map updates shall also extend to any new formats which FEMA may convert FIRM and FBFM maps to (e.g. Digital FIRMs or D-Firms).
- (C) An unofficial reproduction of the most recent official Flood Hazard Area Maps is included as an attachment to these regulations (Attachment A).

### **1.03 Areas and Activities Covered by these Regulations**

- (A) These regulations shall apply **only** to areas identified as *areas of special flood hazard* (hereinafter referred to as the Flood Hazard Area) on the City of Barre Official Flood Hazard Area Map [§4411(b)].
- (B) Unless specifically exempted herein, no development shall commence within the Flood Hazard Area except in compliance with these regulations. [§4449(a)(1)]

### **1.04 Intent**

- (A) It is the intent of these regulations:
1. To detail the simplest possible procedures that will allow the city to develop in the manner that is consistent with the general policies outlined in the City of Barre

Municipal Plan;

2. To be in accordance with §4411(b)(3)(G) and §4424 of the Act as amended;
3. To minimize and prevent loss of life and property, the disruption of commerce, the impairment of the tax base, and the extraordinary public expenditures and demands on public services that result from flood 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 the design and construction of development in the flood hazard areas is accomplished in a manner that minimizes or eliminates the potential for flood damage; and
  - c. Requiring the elevation of all structures to a level above the base flood elevation for all new development.
4. To manage all flood hazard areas designated pursuant to 10 V.S.A. §753;
5. To make wise use of open land in flood prone areas;
6. To make the City of Barre as well as its residents and property owners eligible for Federal Flood Insurance.
7. To further the purposes of the Act described under 24 V.S.A. §4302 and to be in accordance with the policies set forth therein. [§4401]

### **1.05 Interpretation and Effect**

- (A) All uses and structures legally in existence as of the effective date of these regulations are allowed to continue indefinitely. Any subsequent development related to pre-existing structures and uses shall be subject to applicable requirements of these regulations.
- (B) These regulations shall not repeal, abrogate, or impair any other land use controls including but not limited to statutes, regulations, rules, ordinances, permits, easements, deed restrictions, and covenants. The provisions of these regulations, however, shall be minimum requirements and shall therefore take precedence over any concurrent and less restrictive controls [§4413(c)].
- (C) The issuance of a permit under these regulations shall not relieve the applicant from the obligation of obtaining any other local permits or necessary approvals by federal or state law.
- (D) All permits and decisions in these regulations are made with respect to property location and these permits and decisions run with the land. Similarly, enforcement of violations of these regulations is applied to the owner of the property where the violation occurs and said violations will run with the land.

### **1.06 Designation of Effect**

- (A) These regulations shall be considered a civil ordinance for the purposes of enforcement through the Judicial Bureau.

### **1.07 Effective Date of Regulations**

- (A) These regulations shall be effective twenty (20) days after adoption (by majority vote of the City Council) and shall remain in effect until repealed or amended in accordance with the Barre City Charter (sec. 107 and 108).
- (B) Development occurring during any adoption or amendment process shall be administered in accordance with the provisions laid out in §4449(d) of the Act.

### **1.08 Amendments**

- (A) These regulations may be amended according to the requirements and procedures established in the Act for preparation of bylaws (§4441) and adopted by the City Council in accordance with the Barre City Charter (sec. 107 and 108).

### **1.09 Severability**

- (A) The provisions of these regulations are severable. If a court of competent jurisdiction holds any provision or the application thereof to any person or circumstance unconstitutional or invalid, the remainder of these regulations shall not be affected.

### **1.10 Computation of Time**

- (A) Where an event is required or permitted by these regulations to occur before, on, or after a specified period of time measured from another event, the first day shall not be counted and the final day shall be counted in calculating the period [§4303a].

### **1.11 Warning of Disclaimer of Liability**

- (A) These regulations do not imply that land outside of the areas covered by these regulations will be free from flood damages. These regulations shall not create liability on the part of the City of Barre, or any municipal official or employee thereof, for any flood damages that result from the reliance on these regulations, or any administrative decision lawfully made hereunder.

## **Section 2. Administration and Enforcement**

### **2.01 Administrative Officer**

- (A) These regulations shall be administered by the Administrative Officer [§4448(a)].
- (B) The Administrative Officer shall be nominated by the Planning Commission and appointed by the City Council for a three-year term. The Administrative Officer may be removed from office for just cause by the City Council after consultation with the Planning Commission [§4448(a)].
- (C) In the absence, disability, or conflict of interest of the Administrative Officer, an acting Administrative Officer shall be appointed and empowered in the same manner as provided above [§4448(b)].
- (D) The Administrative Officer may hold any other office in the municipality except for membership on the Development Review Board. Salary for the Administrative Officer shall be paid out of the General Fund in an amount and schedule established by the City Council [§4448(a)].
- (E) The Administrative Officer shall manage and enforce these regulations literally and shall not have the power to permit any development that is not in conformance with these regulations [§4448(a)].
- (F) The Administrative Officer shall have the power to hear and decide applications for Flood Hazard Area Development permits under section 4.01 of these regulations [§4449(a)(1)].
- (G) The Administrative Officer shall have the power to hear and decide applications for Certificates of Flood Hazard Compliance under section 4.02 of these regulations [§4449(a)(2)].
- (H) The Administrative Officer shall investigate complaints and has the power to pursue violations of these regulations through procedures set forth under section 2.03 of these regulations [§4452].
- (I) The Administrative Officer should provide forms required to obtain any municipal permit or other municipal authorization required under these regulations or any other regulations or ordinances that relate to the regulation of land development within the City of Barre [§4448(c)].
- (J) The Administrative Officer shall inform any person applying for a Flood Hazard Area Development permit that the person should contact the regional permit specialist employed by the Vermont Agency of Natural Resources in order to assure timely action on any related state and federal permits; nevertheless, the applicant retains the obligation to identify, apply for, and obtain relevant state and federal permits [§4448(c)].
  - 1. The Administrative Officer has the power to require applicants to submit a Vermont Agency of Natural Resources Project Review Sheet within the application process in

order to assure timely action on any related state and federal permits. The applicant, nevertheless, retains the obligation to identify, apply for, and obtain relevant state and federal permits.

- (K) The Administrative Officer shall meet the posting and recording requirements of section 2.05 of these regulations [§4449(b-c)].
- (L) The Administrative Officer is responsible for any other tasks outlined within these regulations which may not be specifically outlined above.

## **2.02 Development Review Board**

- (A) The Development Review Board (hereinafter referred to as “the DRB”) shall not consist of less than 5 nor more than 9 members whose members shall be appointed by the City Council for specified terms. The Board may consist of the members of the Planning Commission. Vacancies shall also be filled by appointment of the City Council for unexpired terms and upon the expiration of terms. The City Council upon written charges and after a public hearing may remove any member of the DRB for just cause. [§4460(b-c)]
- (B) The DRB shall have all powers set forth in the Act to administer the provisions of these regulations, including, but not limited to, the power to:
  - 1. Consider decisions of the Administrative Officer upon appeal under section 3.01 of these regulations [§4460(e)(10)].
  - 2. Consider requests for a variance under section 3.02 of these regulations [§4460(e)(11)].
- (C) The DRB shall adopt rules of procedure and perform its functions in conformance with the Act [§4461] and Vermont’s Open Meeting Law [1 V.S.A. §§310-314].
- (D) The DRB shall meet all relevant recording requirements of section 2.05 of these regulations.

## **2.03 Violations and Enforcement**

- (A) **Scope of Provisions:** The commencement or continuation of any development which is not in conformance with the provisions of these regulations shall constitute a violation. Violations of these regulations shall be prosecuted in accordance with the Act [§§4451, 4452].
- (B) **Identification and Investigation of Violations:** The Administrative Officer is required, by law, to enforce all violations of these regulations [§4448(a)]. Whether through direct observation, written or oral complaint, site visit, or notification of violation from the landowner, the discovery of an alleged violation must be pursued by the Administrative Officer.

1. Any person may file a written complaint with the Administrative Officer if it is believed that a violation of these regulations has occurred. The complaint shall state fully the causes and basis for the alleged violation. The Administrative Officer shall properly record such complaint, investigate within a reasonable time, and take action as appropriate in accordance with these regulations.
2. The Administrative Officer may not enter upon any private property, for purposes of inspection and investigation, except by permission of the landowner or per a search warrant duly issued by a court [13 V.S.A. §4701].

(C) Formal Notice of Violation: No action may be brought under this section unless the alleged offender has had at least seven (7) working days' notice by certified mail that a violation exists and has failed to satisfactorily respond or correct the alleged violation [§4451(a)].

1. The warning notice shall state:
  - a. That a violation exists;
  - b. That the alleged offender has an opportunity to cure the violation within the seven (7) day period;
  - c. That the alleged offender has the right to appeal the notice of violation to the DRB within fifteen (15) days from the date the notice was sent; and
  - d. That the alleged offender will not be entitled to an additional warning notice for a violation occurring after the seven (7) day period.
2. Action may be brought without notice and opportunity to cure if the alleged offender repeats the violation of these regulations after the seven (7) day notice period and within the next succeeding twelve (12) months.
3. Notices of violation shall be recorded in the municipal land records. When violations are cured and any related assessed penalties are paid, the Administrative Officer shall record a notice of violation removal in the municipal land records.

(D) Informal Resolution of Violations: Where a landowner is cooperating with the Administrative Officer in finding a cure for the violation, the Administrative Officer has the authority to enter written agreements to resolve violations. The Administrative Officer is under no obligation to enter into any agreement- informal resolutions are not required under statute and are provided by the City of Barre as an amicable means of resolving violations.

1. At a minimum, any agreement shall:
  - a. Be in writing and be signed by both the violator and administrator.
  - b. Must establish a timeline for curing the violation.
  - c. Give written authorization that will allow the Administrative Officer to inspect the premises upon completion (or by the agreed upon date of completion) to ensure compliance.
2. The Administrative Officer is prohibited from making any agreement allowing a

violation to continue even if the violation is minimal, inadvertent, and/or the violator agrees to pay a fine [§4448(a)]. Acceptable reasons for providing time to cure a violation may include winter weather (e.g. landscaping may not be possible until spring).

(E) Enforcement Action: Where a property owner fails to remedy the situation within the 7-day period or the timetable agreed to under an informal resolution, the Administrative Officer, in the name of the City of Barre, shall bring appropriate action to enforce the provisions of these regulations [§4451]. Each day that a violation is continued after the initial seven (7) day notice shall constitute a separate offense. Enforcement may be by any means allowed under §4454 including, but not limited to:

1. The Administrative Officer may issue a Municipal Complaint and pursue enforcement before the Judicial Bureau in accordance with the provisions of 24 V.S.A. §1974a and §1977 with penalties as prescribed below:
  - a. First offence. A first offence of these regulations shall be punishable by a fine of \$100. The waiver fee shall be \$75.
  - b. Subsequent offences. Any subsequent offences of the same provision of the regulations within a 12 month period shall be punishable by a fine of \$200. The waiver fee shall be \$150.
2. The Administrative Officer may notify the City Attorney of the violation who will take action in Environmental Court or Superior Court, as appropriate, with penalties as prescribed below:
  - a. Any person who violates these regulations shall be fined not more than the amount prescribed under the Act [§4451(a)] which at the time of the development of these regulations is \$100.
3. After all legal means to remedy the violation have been exhausted and the structure is still in violation, FEMA is authorized to deny flood insurance to the property provided the community declares the property to be in violation of the regulations. The Administrative Officer shall submit a declaration to the Administrator of the NFIP requesting a denial of flood insurance. The declaration shall consist of:
  - a. The name of the property owner and address or legal description of the property sufficient to confirm identity or location.
  - b. A clear and unequivocal declaration that the property is in violation of a cited State or local law, regulation, or ordinance.
  - c. A clear statement that the public body (i.e. the Administrative Officer) making the declaration has the authority to do so and a citation of that authority.
  - d. Evidence that the property owner has been provided notice of the violation and the prospective denial of insurance.
  - e. A clear statement that the declaration is being submitted pursuant to Section 1316 of the National Flood Insurance Act of 1968, as amended.

- (F) Limitations on Enforcement: The City of Barre shall observe any limitations on enforcement proceedings related to municipal permits and approvals as set forth in the Act [§4454] including the following:
1. An enforcement action relating to any municipal land use permit must be instituted within fifteen (15) years of the date of when the alleged violation first occurred and not thereafter.
  2. The burden of proving the date the alleged violation first occurred shall be on the person against whom the enforcement action is instituted.
  3. No enforcement proceeding may be instituted to enforce an alleged violation of a permit or certificate which received final approval after July 1, 1998, unless the permit or certificate or a notice of the permit or certificate was recorded in the land use records of the City of Barre as required by the Act [§4454(b)].
  4. Nothing in this section shall prevent any enforcement proceeding by the City of Barre under any other authority it may have, including, but not limited to, the City's authority under Title 18 relating to abatement and removal of a public health risk or hazard [§4454(c)].
- (G) Posting and Recording Requirements: The Administrative Officer shall meet the posting and recording requirements of section 2.05.

## **2.04 Fees**

- (A) The City Council may prescribe reasonable fees to be charged with respect to the administration of these regulations and for the administration of development reviews. These fees may include the costs of posting and publishing notices and holding public hearings and the cost of conducting periodic inspections during the installation of public improvements. As established in the fee schedule, these fees may be payable by the applicant upon submission of the application or prior to issuance of the permit [§4440(b)].
- (B) The City Council may set reasonable fees for filing of notices of appeal and for other acts as it deems proper, the payment of which shall be a condition for filing the notice [§4440(c)].
- (C) The fee schedule may include a process and provisions that require applicants to pay for reasonable costs of an independent technical review of their applications [§4440(d)].
- (D) An applicant may be charged the cost of the recording fees as required by law [§4449(c)(2)].
- (E) The schedule of fees shall be posted in the offices of the Municipal Clerk and Administrative Officer, and may be altered or amended only by resolution of the City Council.

## **2.05 Posting and Recording Requirements**

- (A) Posting: Within three (3) days following the issuance of a Flood Hazard Area Development

permit, Certificate of Flood Hazard Compliance, or decision by the DRB, the Administrative Officer shall post a copy of the permit or approval in the City Clerk's Office until the expiration of the appeal period [§4449(b)(2)]. Notice must also be posted within view of the public right of way most nearly adjacent to the subject property until the time for appeals has passed. Each posting shall contain a statement of the period of time within which an appeal may be taken [§4449(b)] and a description as to where a full description of the project and approval can be found.

(B) Recording with the Assessor: Within three (3) days following the issuance of a Flood Hazard Area Development permit the Administrative Officer shall deliver a copy of the permit to the City Assessor [§4449(b)(1)].

(C) Recording Permits with the City Clerk: Within thirty (30) days after the issuance of any of the items listed below, the Administrative Officer shall deliver the original, or a legible copy, of the issuance to the City Clerk for recording in the municipal land records [§4449(c)(1)].

1. The following issuances are covered in this subsection:

- a. Flood Hazard Area Development permits including all associated approvals (including variances);
- b. Certificate of Flood Hazard Compliance;
- c. Results of any appeals;
- d. Notices of violation; and
- e. Notices of denial of an application. [§4449(c)(1)(A)]

2. Any issuance delivered for recording shall list:

- a. As grantor, the owner of record title to the property at the time of issuance;
- b. As grantee, the municipality issuing the permit, certificate, or notice – i.e. *the City of Barre*;
- c. The municipal office where the original, or a true, legible copy of the issuance may be examined;
- d. Whether an appeal of such issuance was taken; and
- e. The tax map lot number or other description identifying the lot [24 V.S.A. §1154(c)].

(D) Recording DRB Minutes and Findings with the City Clerk: The DRB shall keep minutes of its proceedings, showing the vote of each member upon each question and shall keep records of its examinations and other official actions. For each case heard and decided, the DRB shall make written findings of fact and conclusions of law that shall be maintained in the City Clerk's Office together with all minutes and other records of the DRB [§4461(a)].

(E) Administrative Officer records: The Administrative Officer shall maintain a record of development including:

1. A file of a copy of any municipal permits, which have been submitted to the City Clerk for recording in the land records, in a location where all municipal land use permits

shall be kept [§4449(c)(1)(B)].

2. Copies of all evidence presented, public notices, hearing minutes, findings of fact and other material collected by the Administrative Officer or DRB in the process of reviewing an application.
3. For any permits issued within the Flood Hazard Area:
  - a. A record of all permits issued;
  - b. A copy of all elevation certificates;
  - c. Any FEMA Letters (LOMA, LOMR, or LOMR-F) associated with the permit;
  - d. All floodproofing certifications required under these regulations; and
  - e. All variance actions, including justification for their issuance.

## **Section 3. Appeals and Variances**

### **3.01 Appeals- Decisions of the Administrative Officer**

- (A) The applicant or an interested person may appeal any decision or act taken by the Administrative Officer by filing a written notice of appeal with the DRB within fifteen (15) days of the act or decision [§4465].
- (B) Notice of Appeal Requirements: A notice of appeal shall be in writing and include [§4466]:
1. The name and address of the appellant.
  2. A brief description of the decision or act with respect to which the appeal is taken.
  3. A reference to applicable regulation provisions.
  4. The relief requested by the appellant.
  5. The alleged grounds why such relief is believed proper under the circumstances.
- (C) Rejection of Notice of Appeal: The DRB may reject an appeal if the DRB determines that the issues raised by the appellant have been decided in an earlier appeal or involve substantially or materially the same facts by, or on behalf of, the same appellant. In these cases the DRB may make their decision without a hearing but shall render a decision and findings of fact within ten (10) days of the filing of the notice of appeal. [§4470(a)]
- (D) Public Hearing: Within sixty (60) days of receiving a notice of appeal, the DRB shall hold a public hearing. [§4468]
1. Public notice for any hearing shall be given by the Administrative Officer not less than fifteen (15) days prior to the date of the public hearing and shall include the date, place, and purpose of such hearing. Public notice shall be: [§§4464, 4468]:
    - a. Mailed to the appellant and applicant;
    - b. Published in a newspaper of general circulation in the City;
    - c. Posted in three or more public places within the municipality including;
      - i. the City Clerk's Office; and
      - ii. Within view from the public right of way most nearly adjacent to the property for which the application is made; and
    - d. Provided to the owners of all properties adjoining the property subject to development without regards to the public right of way.
      - i. The notification shall include a description of the proposed project and shall be accompanied by information that clearly informs the recipient where additional information may be obtained, and that participation in the local proceedings is a prerequisite to the right to take any subsequent appeal.
      - ii. The Administrative Officer is responsible for notifying adjoining

landowners either by certified mail, return receipt requested, or by written notice hand delivered or mailed to the last known address supported by a sworn certificate of service.

2. The appellant is required to bear the cost of the hearing through a fee (as established by the City Council) sufficient to cover the administrative costs. [§4464(a)(3)]
  3. All hearings of an appeal shall be open to the public. In any hearing, there shall be an opportunity for each person wishing to establish status as an interested person (as defined in Section 11) to demonstrate that the criteria set forth in the definition are met. The DRB shall keep a written record of the name, address, and participation of the persons [§4461(b)]. Any interested person may appear and be heard in person or be represented by an agent at the public hearing [§4468].
  4. The rules of evidence applicable at any hearing under appeal shall be the same as the rules of evidence applicable in contested cases in hearings before administrative agencies [§4468]. These rules of evidence are found in 3 V.S.A. §810.
  5. In most cases the Administrative Officer is the defendant in the appeal before the DRB. In those cases the Administrative Officer must not act as a staff member during the hearing or deliberations.
  6. Any hearing may be adjourned by the DRB from time to time, pending submission of additional information, provided, however, that the date and place of the next hearing shall be announced at the hearing [§§4468, 4464(b)(1)].
- (E) Decision: The DRB should close the hearing promptly after all parties have submitted requested information. The DRB decision shall be issued within forty-five (45) days after the close of the hearing and a failure of the DRB to issue a decision within the required period shall be deemed approval. The decision must be in writing and shall include a statement of the factual bases on which the DRB has made its conclusions and a statement of conclusions. [§4464(b)(1)].
1. In rendering a decision in favor of the applicant, the DRB may attach reasonable conditions and safeguards, as it deemed necessary to implement the purposes of the Act, these regulations, and the municipal plan then in effect. [§4464(b)(2)]
  2. Copies of the DRB decision shall be sent to the appellant and applicant (both by certified mail), every interested person who was heard at the hearing and the Administrative Officer.
  3. Applicants wishing to exercise their right to have an application deemed approved shall appeal the lack of action by the DRB to the Environmental Court.
- (F) Appeals: Appeals from the decisions of the DRB may be made to the Environmental Court, as per section 3.03. [§4771]

- (G) Posting and Recording Requirements: The Administrative Officer shall meet the posting and recording requirements of section 2.05.

### **3.02 Requests for Variance**

- (A) An applicant may receive relief from a provision of these Flood Hazard Area regulations through the granting of a variance by the DRB. Variances may be granted for general structures and renewable energy structures, under separate criteria, with additional flood hazard area variance standards. Variances to allow uses that are not permitted in the applicable district are not permissible. [§4469]
- (B) Purpose: The purpose of a variance is to address a hardship, related to the physical characteristics of a particular lot, which hampers the owner from enjoying the same property rights accorded to others in the Flood Hazard Area district. An applicant cannot request rights, which have not been accorded to all others in the same district. Therefore, in no case shall the DRB grant a variance for a use which is not permitted in the Flood Hazard Area district. Because a variance results in a deviation from the City Plan and regulations, variances are allowed only in narrow circumstances.
- (C) Application and procedure: Variances are treated as appeals [§§4465, 4466], therefore an application for a variance shall follow the procedures established in 3.01(B)-(G).
- (D) Variance Standards: General structures and renewable energy structures are considered under separate standards [§4469] with regards to variances. Regardless of the type of structure, every variance must meet additional flood hazard area variance requirements [44 CFR, Section 60.6].
1. General structures. The DRB may render a decision in favor of the applicant only upon establishing **all** of the following facts below **and** those in subsection (3) in its decision [§4469]:
    - a. That there are unique physical circumstances or conditions, including irregularity, narrowness, or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to the particular property, and that unnecessary hardship is due to such conditions, and not the circumstances or conditions generally created by the provisions of the Flood Hazard Area regulation in the neighborhood or district in which the property is located; **and**
    - b. That because of such physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the flood hazard area regulation and that the authorization of a variance is therefore necessary to enable the reasonable use of the property; **and**
    - c. That the unnecessary hardship has not been created by the applicant; **and**
    - d. That the variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, substantially or permanently impair the appropriate use or development of adjacent property,

reduce access to renewable energy resources, nor be detrimental to the public welfare; **and**

- e. That the variance, if authorized, will represent the minimum variance that will afford relief and will represent the least deviation possible from the flood hazard area regulation and from the city plan.

2. Renewable energy structures. For a structure which is primarily a renewable energy resource structure, the DRB may render a decision in favor of the applicant only upon establishing **all** of the following facts **and** those in subsection (3) in its decision [§4469]:

- a. It is unusually difficult or unduly expensive for the appellant to build a suitable renewable energy resource structure in conformance with these regulations; **and**
- b. That the hardship was not created by the appellant; **and**
- c. That the variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, substantially or permanently impair the appropriate use or development of adjacent property, reduce access to renewable resources, nor be a detriment to the public welfare; **and**
- d. That the variance, if authorized, will represent the minimum variance that will afford relief and will represent the least deviation possible from the flood hazard area regulations and from the city plan.

3. Flood hazard area. For any structure in flood hazard area, the DRB may render a decision in favor of the applicant only upon establishing **all** of the facts identified in subsection (1) or (2) above, as applicable, **and** the following facts in its decision:

- a. For projects within the regulatory floodway, that during the base flood discharge, the variance will not result in increased flood levels.
- b. For parcels of one-half acre or less in size which are also contiguous to and surrounded by parcels with existing structures constructed below the base flood elevation, the following variance standards apply:
  - i. Demonstration of good and sufficient cause;
  - ii. Determination that failure to grant the variance would result in exceptional hardship to the applicant;
  - iii. Determination that the granting the variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimize the public, or conflict with other local ordinances; and
  - iv. That the variance, if approved, is the minimum necessary, considering the flood hazard, to afford relief.
- c. While the granting of variances is generally limited to a parcel size of less than one-half acre in size (see subsection (b) above), deviations from that limit may occur. However, as the parcel size increases beyond one-half acre, the technical justification for issuing a variance increases.
- d. For variances necessary to allow for the conduct of a functionally dependent

use the following standards apply:

- i. The standards identified in subsection (b); and
- ii. Determination that the structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.

- (E) Mandatory Condition of Variance Approval: In addition to any other conditions the DRB may attach through the procedures established in Section 3.01(E), every permit issued for any variance within the Flood Hazard Area shall state:

"This development is not in conformance with the Flood Hazard Area regulations established by the City of Barre to protect the health, safety and welfare of the occupants and/or property. This development will be maintained at the risk of the owner. The issuance of this variance to develop in the flood hazard area will result in increased premium rates for flood insurance up to amounts as high as \$25 for \$100 of insurance coverage and may increase risks to life and property in the event of a flood."

### **3.03 Appeals to Environmental Court**

- (A) Applicability: An interested person who has participated in the local regulatory proceeding under these regulations may appeal a decision of the DRB to the Environmental Court [§4471]. Participation in a local regulatory proceeding shall consist of offering, through oral or written testimony, evidence or a statement of concern related to the subject of the proceeding. Appeals to Environmental Court must be taken in accordance with the provisions of Vermont Rules of Civil Procedure (V.R.C.P.) 76a and Vermont Rules of Appellate Procedures (V.R.A.P.) 3 and 4.
- (B) Initiation of Appeal. Within thirty (30) days [V.R.A.P. 4] following the date of decision rendered by the DRB, notice of the appeal shall be filed by certified mail with fees to the Environmental Court and mailing a copy to the municipal clerk or Administrative Officer, if so designated, who shall supply a list of interested persons to the appellant within five (5) working days. Upon receipt of the list of interested persons, the appellant shall, by certified mail, provide a copy of the notice of appeal to every interested person and, if any one or more of those persons are not then parties to the appeal, upon motion they shall be granted leave by the court to intervene [§4471(c)].
- (C) Notice of Appeal Requirements: A notice of appeal shall be in writing and include [§4471]:
1. The name of the party appealing.
  2. What board made the decision being appealed (e.g. the DRB).
  3. The nature of the decision under appeal (e.g. variance request or appeal of Administrative Officer decision).
  4. A reference to the specific provisions of the regulation.

5. The relief requested by the appellant.
  6. The signature of the appellant or attorney.
- (D) Filing Fee: The filing fee is established by V.R.C.P. 76 (e). At the time of the development of these regulations, the fee for filing an appeal with the Environmental Court is \$150.

## **Section 4. Permits and Development Review Procedures**

### **4.01 Flood Hazard Area Development Permit**

- (A) No development may be commenced in the Flood Hazard Area without a Flood Hazard Area Development permit issued by the Administrative Officer.
- (B) The following activities are exempt from regulation:
1. Normal maintenance and repair of an existing structure.
  2. Minor internal improvements to existing structures.
  3. The demolition of structures.
  4. Farming including:
    - a. Accepted agricultural and best management practices (AAPs, BMPs) as defined by the Commissioner of Agriculture, Food, and Markets [§4413(d)]
    - b. The construction or alteration of farm structures however such construction or alteration shall meet setbacks required by these regulations, unless specifically waived by the Commissioner. Written notification, including a sketch plan showing the proposed structure and associated setback distances from road rights-of-way, property lines, and surface waters, and any waiver from the state, shall be made to the Administrative Officer prior to construction, as required under the AAPs. [§4413(d)]
  5. Forestry including:
    - a. Accepted management practices for Silviculture (forestry) as defined by the Commissioner of Forests, Parks, and Recreation [§4413(d)].
  6. Power generation and transmission facilities that are regulated under 30 V.S.A. §248 by the Vermont Public Service Board.
  7. Hunting, fishing, and trapping as specified under 24 V.S.A. §2295 on private or public land. This does not include facilities supporting such activities, such as firing ranges or rod and gun clubs.
- (C) Applicant. All owners of the property on which the proposed development will occur must be the applicant or a co-applicant for a Flood Hazard Area Development permit.
- (D) Application Requirements: An application for a Flood Hazard Area Development permit shall be submitted to the Administrative Officer along with the permit fee and all other information as required to determine compliance with these regulations.
1. Permit applications in the Flood Hazard Area should include the following:

- a. A sketch map showing the distance of all features of the proposed development from the nearest flooding water body and from the nearest boundary of the Flood Hazard Area District or Sub-district.
  - b. All existing and proposed grade elevations where grades are proposed to be altered. Where fill is proposed, an application for a CLOMR-F as described in section 10 of these regulations.
  - c. The elevation, in relation to mean sea level, of the lowest floor, including the basement, of any new or substantially improved structures.
  - d. When applicable, the elevation to which any new or substantially improved structures will be flood-proofed.
  - e. When applicable, either a determination by the State of Vermont Floodplain Coordinator or certification from a licensed professional engineer that the flood-proofed structure meets the flood-proofing criteria of these regulations.
2. The Administrative Officer shall require applicants to submit a Vermont Agency of Natural Resources Project Review Sheet to assure that no other state or federal permits are required in conjunction with the application. The Project Review Sheet shall identify all State and Federal agencies from which permit approval is required for the proposal. The identified permits, or letters indicating that such permits are not required, shall be submitted. Where final determinations have not been made by State or Federal agencies, the Administrative Officer may condition Flood Hazard Area Development permits to require that development in conjunction with the permit cannot begin until remaining determinations are submitted to the Administrative Officer.
- (E) Application Deemed Received: The Administrative Officer shall, upon receipt, review the application to determine completeness. A complete application will include sufficient information for the Administrative Officer to make a determination of compliance and any applicable fees.
1. If the Administrative Officer finds the application incomplete, the Administrator shall notify the applicant in writing of all additional information or fees required.
  2. If the Administrative Officer finds the application complete, the Administrator shall record on the application the date on which the application was received.
- (F) Application Referral. Once the Administrative Officer has received a complete application, the Administrative Officer shall mail or deliver a copy of the application and all supporting materials to the State NFIP Coordinator at the Vermont Agency of Natural Resources, Department of Environmental Conservation, River Management Program. [§4424(2)(D)]
1. For applications involving the alteration or relocation of a watercourse the Administrative Officer shall also mail or deliver a copy of the application and all supporting materials to adjacent communities and to the Stream Alteration Engineer

at the Vermont Agency of Natural Resources, River Management Section.

2. No permit for development shall be granted for an application within the flood hazard area until after either thirty (30) days have elapsed following the mailing or the Agency delivers comments on the application.
- (G) Substantial Improvement/Damage Determination. The Administrative Officer shall determine if the proposed development constitutes a substantial improvement or, if applicable, the proposed development will repair a substantially damaged structure. [See Section 5].
1. Where a proposal is determined to be a substantial improvement or substantial damage, the entire structure must be brought into compliance with these regulations.
  2. Where a proposal is determined to be a non-substantial improvement or non-substantial damage only the improvement will be reviewed for conformance with these regulations.
- (H) District Determination. The Administrative Officer shall determine if the proposal is within the Flood Hazard Area district and, if so, which sub-district(s) the proposal is located in. [See section 6.01]
- (I) Base Flood Elevation (BFE) Determination. If applicable, the Administrative Officer will review the BFE(s) provided by the applicant or will provide BFE(s) to the applicant if requested. [See section 7.01]
- (J) General Provisions; Specific Use & Structure Provisions: Where applicable, a proposed permitted use or structure must meet the standards established in Section 8.
- (K) District Standards: The Administrative Officer shall determine if the proposal meets the Flood Hazard Area District & Sub-District Standards (Section 9) and any other criteria as required under NFIP. Applications shall:
1. Meet the District Review Criteria of Section 9 including:
    - a. Where development in Zone A is proposed, the regulations in Section 9.02 shall be applied to review the application.
    - b. Where development in Zone AE is proposed within the floodway sub-district, the regulations in Section 9.03 shall be applied to review the application.
    - c. Where development in Zone AE is proposed within the floodway fringe but outside of the floodway, the regulations in Section 9.04 shall be applied to review the application.
  2. Where a proposal requires a LOMA, LOMR-F, or LOMR, that the proposal shall receive the Letters of Map Amendment or Revision as outlined in Section 10.

- (L) Administrative Officer Action: Within thirty (30) days after the submission of a completed application and fees, the Administrative Officer must act on the permit [§4448(d)]. Acting on the permit involves a documented action on the proposal, such as approving or denying the application, including referrals to state agencies required under the Act and referring applications to the clerk of the DRB for consideration.
- (M) Deemed Approval: If the Administrative Officer fails to act within the 30-day period, a permit shall be deemed issued on the 31st day [§4448(d)]. Applicants wishing to exercise their right to have an application deemed approved shall appeal the lack of action by the Administrative Officer to the DRB. This appeal shall be heard at the first available meeting to decide the facts of the claim (i.e. a complete application was submitted and the Administrative Officer failed to act in a timely manner). If the DRB finds in favor of the appellant the Administrative Officer shall be ordered to issue the permit. The permit shall then be treated as any other permit issued by the Administrative Officer including posting, effective dates, and appeals.
- (N) Decisions: A Flood Hazard Area Development permit shall be issued by the Administrative Officer only in accordance with the Act [§4449(a)(1)] and these regulations.
1. If in the opinion of the Administrative Officer, the proposal as set forth in the application is in conformance with the provisions of these regulations, the Administrative Officer shall approve the Flood Hazard Area Development permit. If the permit is approved, the Administrative Officer shall notify the applicant, in writing, of the approval stating the effective date of the permit.
  2. If in the opinion of the Administrative Officer, the proposal as set forth in the application is not in conformance with the provisions of these regulations, the Administrative Officer shall deny the Flood Hazard Area Development permit application. If the permit is denied, the Administrative Officer shall notify the applicant in writing, stating the reasons for denial and shall contain a statement of the period of time within which an appeal may be taken.
- (O) Effective Date: No permit shall take effect until the time for appeal has passed. In the event an appeal is filed, the permit shall not take effect until the DRB has heard the appeal and decided that the permit should be issued, whereupon it shall take effect after final adjudication of said appeal [§4449(a)(3)].
1. The effective date of permits which did not require DRB approval or a decision on appeal is fifteen (15) days from the date of issuance of the Flood Hazard Area Development permit.
  2. The effective date of permits which required DRB approval or involved an appeal of a decision of the Administrative Officer is thirty (30) days from the decision of the DRB or fifteen (15) days from the issuance of the Flood Hazard Area Development permit, whichever date is latest.
- (P) Appeals: Appeals from the decisions of the Administrative Officer may be made to the DRB,

as per section 3.01 of these regulations, within fifteen (15) days of the decision or act.

(Q) Permit Expiration: All development must be commenced within a period of six 6 months from the effective date of the permit. A permit in which the deadline has lapsed without commencement shall be deemed expired and may be subject to enforcement action.

1. Once legally commenced, all construction must be complete within a period of 36 months from the effective date of the permit. A permit in which the deadline has lapsed without completion shall be deemed expired and may be subject to enforcement action.
2. Where an applicant would like to develop based on an expired permit, reapplication for a new Flood Hazard Area Development permit, including any associated approvals, is required. If appropriate, the Administrative Officer may find the incomplete development in violation of these regulations and action may be taken.
3. Any Flood Hazard Area Development permit issued based on material inaccuracies or misrepresentations in an application or in any supporting documentation to an application shall be null and void; and any associated development activity commenced under such permit shall constitute a violation of these regulations subject to enforcement.
4. A permit for a use which has been abandoned is not a valid permit.

(R) Conditions of Flood Hazard Area Development Permits. Except as described below, there is hereby established a condition on all approvals of Flood Hazard Area Development permits stating that the applicant, upon completion of development, shall receive a Certificate of Flood Hazard Compliance and submit to the Administrative Officer a copy of the FEMA NFIP Elevation Certificate.

1. A Certificate of Flood Hazard Compliance is not required for permits issued for non-substantial improvements where the improvements only relate to these regulations for substantial improvement calculations.
  - a. For example, a non-substantial renovation of a third floor kitchen in the flood hazard area requires a permit but will not require a Certificate of Flood Hazard Compliance because the kitchen improvements are tracked only as a measure of substantial improvement of the entire structure. On the other hand a non-substantial renovation of a garage with the floor below BFE will require but the permit and certificate of compliance because the garage renovations are material to the flood hazard regulations.
  - b. The Administrative Officer shall determine at the time of issuance of the permit whether a Certificate of Flood Hazard Compliance will be required.

(S) Posting and Recording Requirements: The Administrative Officer shall meet the posting and recording requirements of section 2.05.

## **4.02 Certificate of Flood Hazard Compliance**

- (A) Where a Certificate of Flood Hazard Compliance has been required under a Flood Hazard Area Development permit, it shall be unlawful to use, occupy, or permit the use or occupancy of any land or structure, or part thereof, developed unless a Certificate of Flood Hazard Area Development has been obtained.
1. A Certificate of Flood Hazard Compliance may also be requested at any time by property owners or their agents to determine compliance with these flood hazard area regulations.
- (B) Applicant. All owners of the property on which the proposed development will occur must be the applicant or a co-applicant for a Certificate of Flood Hazard Compliance.
- (C) Application Requirements: An application for a Certificate of Flood Hazard Compliance shall be submitted to the Administrative Officer along with the application fee and all other information as required to determine compliance with these regulations.
1. In addition to any other information provided, applications for a Certificate of Flood Hazard Compliance shall include all as-built elevation certificates as required under the associated permit.
- (D) Application Deemed Received: The Administrative Officer shall, upon receipt, review the application to determine completeness. A complete application will include sufficient information for the Administrative Officer to make a determination of compliance and any applicable fees.
1. If the Administrative Officer finds the application incomplete, the Administrator shall notify the applicant in writing of all additional information or fees required.
  2. If the Administrative Officer finds the application complete, the Administrator shall record on the application the date on which the application was received.
- (E) Administrative Officer Action: Within thirty (30) days after the submission of a completed application and fees, the Administrative Officer must act on the application [§4448(d)]. Acting on the application involves a documented action on the proposal, such as approving or denying the application.
- (F) Deemed Approval: If the Administrative Officer fails to act within the 30-day period, a certificate shall be deemed issued on the 31st day [§4448(d)]. Applicants wishing to exercise their right to have an application deemed approved shall appeal the lack of action by the Administrative Officer to the DRB. This appeal shall be heard at the first available meeting to decide the facts of the claim (i.e. a complete application was submitted and the Administrative Officer failed to act in a timely manner). If the DRB finds in favor of the appellant the Administrative Officer shall be ordered to issue the certificate. The certificate shall then be treated as any other permit issued by the Administrative Officer including posting, effective dates, and appeals.

- (G) Decisions: A Certificate of Flood Hazard Compliance shall be issued by the Administrative Officer only in accordance with the Act [§4449(a)(1)] and these regulations.
1. If in the opinion of the Administrative Officer, the development has been constructed in conformance with the issued permit and the provisions of these regulations, the Administrative Officer shall approve the Certificate of Flood Hazard Compliance. If the permit is approved, the Administrative Officer shall notify the applicant, in writing, of the approval stating the effective date of the permit.
  2. If in the opinion of the Administrative Officer, the proposal as set forth in the application is not in conformance with the provisions of these regulations, the Administrative Officer shall deny the Certificate of Flood Hazard Compliance application. If the permit is denied, the Administrative Officer shall notify the applicant in writing, stating the reasons for denial and shall contain a statement of the period of time within which an appeal may be taken.
- (H) Effective Date: No certificate shall take effect until the time for appeal has passed. In the event an appeal is filed, the certificate shall not take effect until the DRB has heard the appeal and decided that the certificate should be issued, whereupon it shall take effect after final adjudication of said appeal [§4449(a)(3)].
1. The effective date of certificates which did not involve a decision on appeal is fifteen (15) days from the date of issuance of the Certificate of Flood Hazard Compliance.
  2. The effective date of permits which involved an appeal of a decision of the Administrative Officer is thirty (30) days from the decision of the DRB or fifteen (15) days from the issuance of the Certificate of Flood Hazard Compliance, whichever date is latest.
- (I) Appeals: Appeals from the decisions of the Administrative Officer may be made to the DRB, as per section 3.01 of these regulations, within fifteen (15) days of the decision or act.
- (J) Posting and Recording Requirements: The Administrative Officer shall meet the posting and recording requirements of section 2.05.

## **Section 5. Substantial Improvement/Damage Determinations**

### **5.01 Determining Substantial Improvements**

- (A) Applicability. Where development constitutes a substantial improvement to an existing structure, the existing structure shall be improved to NFIP standards and to the standards of these regulations.
1. Substantial improvement means any repair, reconstruction, or improvement of a structure, the cost of which exceeds 50 percent of the market value of the structure, before the start of construction.
  2. This term includes structures which have incurred "repetitive loss" or "substantial damage", regardless of actual work performed.
- (B) Calculating Substantial Improvements. The following shall apply when calculating substantial improvements:
1. Unless stricter rules are described in this section, FEMA NFIP guidance such as the *NFIP Flood Plain Management Requirements- Desk Reference* shall be used to guide calculation of market value of structure and costs.
  2. Where one building is attached to another through a covered breezeway or similar connection, the two buildings are considered separate and substantial improvement calculations shall be made for each structure independently.
  3. All improvements shall be counted cumulatively over 3 years to determine if a substantial improvement of a structure has occurred.
    - a. Any non-permitted improvements discovered after the fact shall be considered to have all occurred at the same time for purposes of determining substantial improvements.
  4. In general the City of Barre shall use the assessed value of the structure as the default value of the structure, and does not preclude an appraisal from being used. The value of the land should not be included in the valuation of the structure.
- (C) Substantial Improvements of Existing Structures. The following shall apply to govern structures that are substantially improved:
1. Where an application proposes to make a substantial improvement to an existing structure, that structure shall be brought into conformance with these regulations. For example a structure with the lowest floor below BFE may be required to elevate the structure.
  2. Where one structure is attached to another through a covered breezeway or similar connection, it is a separate structure and not an addition. Therefore, substantial improvement of a structure would require the elevation of the structure and all

additions but not separate structures.

3. Regardless of substantial improvement determination, all additions (i.e. expansions of building footprint) shall meet NFIP requirements.

(D) Non-Substantial Improvements of Existing Structures. The following shall apply to govern structures that are not substantially improved:

1. Where a proposal is determined to be a non-substantial improvement only the improvement will be reviewed for conformance with these regulations.
2. Non-substantial improvements to existing structures apply to existing structures on their existing footprints. Additions to structures must be compliant with all relevant requirements of these regulations.

(E) The term 'substantial improvement' does not include the following:

1. The cost of improvements of a structure to correct existing violations of state and 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;
2. Any alteration of a historic structure provided that the alteration will not preclude the structure's continued designation as a historic structure. The Administrative Officer may request from the applicant a Section 106 report, prepared by a qualified professional, to demonstrate compliance with this provision.
  - a. This exemption does not apply to additions (i.e. expansions of building footprint) to historic structures which must be built in compliance with these regulations.

## **5.02 Determining Substantial Damage**

(A) Applicability. Where a substantially damaged structure is proposed for redevelopment, the structure shall be redeveloped to the standards of these regulations.

(B) Calculating substantial damage. The following shall apply when calculating substantial damages:

1. Unless stricter rules are described in this section, FEMA NFIP guidance such as the *NFIP Flood Plain Management Requirements- Desk Reference* shall be used to guide calculation of market value of structure and costs to repair.
2. In general the City of Barre shall use the assessed value of the structure as the default value of the structure. The value of the land should not be included in the valuation of the structure.

(C) Substantial damage of existing structures. The following shall apply to govern structures that are substantially damaged:

1. Where a substantially damaged structure is proposed for redevelopment, that structure shall be brought into conformance with these regulations. For example a building with the lowest floor below BFE which has been substantially damaged may be required to elevate the building during reconstruction.

(D) Non-Substantial damage of existing structures. The following shall apply to govern structures that are not substantially damaged:

1. Redevelopment of a structure which has sustained non-substantial damage shall have that development reviewed under the rules regarding substantial improvements above (Section 5.01).

## **Section 6. Flood Hazard Area District & Sub-District Delineations**

### **6.01 Delineating the Flood Hazard Area and Sub-District Boundaries**

- (A) Delineation of Flood Hazard Area Including Floodway and Fringe Sub-Districts in Zone AE. When interpreting the boundaries of districts in Zone AE on the Official Flood Hazard Area Map, the Administrative Officer shall follow the rules below.
1. The Administrative Officer shall determine the boundaries of the designated flood hazard area, including the location of sub-district boundaries, by visual inspection of the Official Flood Hazard Area map or by scaling distances on the Official Flood Hazard Area map, as appropriate.
  2. When the Administrative Officer cannot definitely determine the location of a district or sub-district boundary line by the above rule, the Administrative Officer shall determine the boundary line in question based upon surveys provided by the applicant and/or other evidence including input from the State Department of Environmental Conservation.
- (B) Delineation of Flood Hazard Area Including Floodway and Fringe Sub-Districts in Zone A. When interpreting the boundaries of districts in Zone A on the Official Flood Hazard Area Map, the Administrative Officer shall follow the rules below. Floodway delineations are required in Zone A for development of new structures and expansions of footprints of existing structures.
1. The Administrative Officer shall determine the boundaries of the designated flood hazard area by visual inspection of the Official Flood Hazard Area map or by scaling distances on the Official Flood Hazard Area map, as appropriate.
  2. The Administrative Officer shall determine the boundaries of the floodway based on evidence presented by the applicant. The applicant shall submit evidence to the Administrative Officer which may include surveys and/or other evidence including input from the State Department of Environmental Conservation.
- (C) When determining whether an existing or proposed structure is in or out of a flood hazard area, the entire structure including all additions shall be considered to be within the flood hazard area if any portion of the structure is within the flood hazard area. When determining the sub-district of an existing or proposed structure, the entire structure shall be considered to be within the most restrictive sub-district in which it touches.
1. Where one structure is attached to another through a covered breezeway or similar connection, it is a separate structure and not an addition.
- (D) Where an applicant believes the property or structure in question is outside of the flood hazard area and therefore not subject to these regulations, the applicant shall request a Letter of Map Amendment (LOMA) or Letter of Map Revision (LOMR), as applicable, from FEMA (see section 10 of these regulations).

## **Section 7. Base Flood Elevations**

### **7.01 Determining Base Flood Elevations**

- (A) Required Accuracy. Determinations of BFE shall be made to tenths of a foot (minimum accuracy).
- (B) Determining Base Flood Elevations in AE Zone. In areas where base flood elevations have been provided by FEMA (i.e. Zones A1-A30, AE, and AH), the base flood elevations in the Flood Insurance Study and accompanying maps (of most recent date) shall be used to administer the provisions of these regulations.
1. Base Flood Elevations shall be determined by visual inspection of the FIRM or FBFM maps or by scaling distances on the FIRM or FBFM maps, as appropriate. Where necessary to meet required accuracy, elevations shall be determined by interpolation between two base flood elevation lines.
  2. Determinations shall be made based on the highest base flood elevation, within the flood hazard area, for the structure in question. A building, therefore, which has a BFE at the north end of 600.5 feet and a BFE of 602.1 feet at the south end of the building, will have a BFE of 602.1 for the entire building.
- (C) Determining Base Flood Elevations in A Zone. In areas where base flood elevations have not been provided by FEMA (i.e. in A Zones) it is the applicant's responsibility to develop the base flood elevation at the site.
1. The applicant shall develop the base flood elevations using information from FEMA or from other State or federal agencies. All base flood elevations must be approved by the State Department of Environmental Conservation.
  2. Where an application for a subdivision or mobile home park has a portion of the subdivision or manufactured home park within the flood hazard area, the applicant shall provide base elevation data.
  3. A Letter of Map Revision (LOMR) from FEMA may be required to establish the base flood elevation (see section 10 of these regulations).

### **7.02 Elevation Certificates**

- (A) Elevation certificates may be required during the application process to determine if the proposed development will be in compliance with these regulations.
- (B) Elevation certificates are required of all new, substantially improved, and floodproofed structures permitted after the effective date of these regulations. Elevation certificates are also required for any LOMA or LOMR-F applications.

## **Section 8. General Provisions; Specific Use & Structure Provisions**

### **Subsection 8A General Provisions**

#### **8.01 Uses Generally**

- (A) These regulations apply primarily to structures and only secondarily at the uses of those structures. One exception is in the change of use from residential to non-residential or vice-versa as the regulations differs for each of these classes of development.
- (B) See the City of Barre Zoning Regulations regarding abandoned uses, non-conforming uses, accessory apartments, child care facilities, residential care and group homes, home occupations, public facilities, and other specifics where such detail is not provided within these regulations.

#### **8.02 Non-Conforming Structures**

- (A) Any legal structure or part thereof, which is not conforming to the provisions of these regulations concerning any structural requirements (including such things as lowest floor elevation) shall be deemed a non-conforming structure [§4412(7)]. Legal non-conforming structures exist as a result of construction prior to adoption of regulations, construction under an earlier set of less restrictive regulations, or through a variance issued at any time.
- (B) Any non-conforming structure may be allowed to exist indefinitely, but shall be subject to the following provisions:
  - 1. A non-conforming structure within the Flood Hazard Area that is proposed to be substantially improved must have the entire structure brought into compliance with these regulations (see Section 5.01 on substantial improvements).
  - 2. A non-conforming structure within the Flood Hazard Area that has been demolished, destroyed, or substantially damaged which is proposed for redeveloped must be redeveloped in accordance with these regulations [§4424(2)] (see Section 5.02 regarding substantial damage).
  - 3. A non-conforming structure shall not be moved without being brought into compliance with these regulations.
  - 4. Nothing in this section shall be deemed to prevent normal maintenance and repair of a non-conforming structure provided that such action does not qualify as a substantial improvement or substantial damage of the structure and that such action does not increase the degree of non-conformance.
  - 5. All additions to non-conforming structures shall be developed in accordance with these regulations (see section 5.01 regarding substantial improvements).
  - 6. Where an individual mobile home lot in an existing mobile home park is vacated, the

lot shall not be considered discontinued or abandoned even if either the lot or park is non-conforming. Replacement mobile homes shall be regulated per section 8.14(B) of these regulations.

## **Subsection 8B Specific Uses & Structures Review Criteria**

### **8.10 Alteration of a Watercourse**

- (A) Alteration or relocation of watercourses. The alteration or relocation of a portion of a watercourse within the Flood Hazard Area is prohibited unless part of an overall plan (adopted by the municipality) involving river restoration, flood mitigation, or other public purpose. In these instances, the alteration or relocation may be permitted only if the flood carrying capacity within the altered or relocated portion of a watercourse is maintained or increased.

### **8.11 Filling and Other Earthwork**

- (A) Requirements regarding filling in the Flood Hazard Area.
1. In instances where these regulations allow fill, all fill must be properly compacted, graded, and, where appropriate, re-vegetated. All filling must be in compliance with Technical Bulletin 10-01 *Ensuring that structures built on fill in or near special flood hazard areas are reasonably safe from flooding.*
  2. Landfilling is not permitted within the stream or river setback, wetlands or wetland setback, nor in the floodway.
  3. The practice of removing unsuitable existing material (topsoil) and backfilling with structural material is not considered the placing of fill.
- (B) Where an applicant wishes to remove a property from the Flood Hazard Area by elevating the natural grade (adding fill in the flood hazard area) the applicant shall provide a CLOMR-F or LOMR-F, as appropriate to the project.

### **8.12 Fuel Tanks**

- (A) All fuel storage tanks (e.g. liquid propane, diesel, home heating fuel, kerosene, etc.) in the Flood Hazard Area shall be placed at or above DFE (Design Flood Elevation) or be securely anchored to prevent flotation; or storage tanks may be placed underground if securely anchored as certified by a qualified professional.
- (B) Fuel storage tanks located below the DFE must have all filler pipes and vents located at or above the DFE.

### **8.13 Manufactured (Mobile) Homes**

- (A) No provision of these regulations shall have the effect of excluding mobile homes, modular

housing, or other forms of prefabricated housing from the municipality, except upon the same terms and conditions as conventional housing is excluded. [§4412(1)(B)]

- (B) Within these regulations, mobile homes and manufactured homes are synonymous.
- (C) In non-conforming manufactured home parks, manufactured homes shall be treated the same as conventional housing except that manufactured homes shall demonstrate that they are securely anchored to foundation system to resist flotation, collapse, and lateral movement.

#### **8.14 Manufactured (Mobile) Home Parks**

- (A) Manufactured home parks are prohibited in the Flood Hazard Area.
- (B) Any manufactured homes to be replaced or substantially improved that are located in an existing manufactured home park, where elevating a replacement home to or above the base flood elevation is not possible, the lowest floor shall be supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than 48 inches in height above grade and be securely anchored to resist flotation, collapse, or lateral movement.
- (C) An evacuation plan for any existing manufactured home parks and subdivisions indicating alternate vehicular access and escape routes shall be filed with the State Civil Defense Office. (See §1910.3(b)(8) of the Federal Register and the FEMA manual, "Manufactured Home Installation in Flood Hazard Areas" for anchoring standards.)

#### **8.15 Public Infrastructure**

- (A) Bridges, culverts, channel management activities, or public projects which are functionally dependent on stream access or crossing are permitted in the Flood Hazard Area provided they are part of an overall plan (adopted by the municipality).

#### **8.16 Recreational Vehicles**

- (A) Storage or use of recreational vehicles is prohibited in the flood hazard area.

#### **8.17 Subdivisions**

- (A) The subdivision of land within the Flood Hazard Area is allowed only if it can be demonstrated by the applicant that each parcel created will have some permissible use. Each new parcel, for instance, shall have sufficient areas outside of the floodway which are suitable for development.
- (B) No subdivision shall be approved where dryland access is not available for emergency service vehicles.
- (C) Where a parcel in a subdivision is not intended for future development (e.g. sale to a land trust for conservation purposes) the subdivision may be permitted provided the permit clearly

reflects that the parcel is for conservation purposes only.

- (D) An evacuation plan for any existing subdivisions indicating alternate vehicular access and escape routes shall be filed with the State Civil Defense Office. (See §1910.3(b)(8) of the Federal Register and the FEMA manual, "Manufactured Home Installation in Flood Hazard Areas" for anchoring standards.)
- (E) All subdivision proposals shall:
  - 1. be consistent with the need to minimize flood damage within flood-prone areas.
  - 2. all public and private utilities and facilities, such as sewer, gas, electrical, and water systems are located and constructed to minimize or eliminate flood damage.
  - 3. adequately drain the site to reduce exposure to flood hazards.

## **Section 9. Flood Hazard Area District & Sub-District Standards**

### **9.01 Flood Hazard Area**

- (A) Note regarding state and federal requirements. Except as limited by state law (24 V.S.A. §4413), the mandatory provisions of state and federal law for continued City participation in the NFIP are hereby adopted by reference and shall be applied in the review of any development in this district.
- (B) All development shall be reasonably safe from flooding. As such, regardless of sub-district, the following requirements apply:
1. All development shall be designed, operated, maintained, modified, and adequately anchored to prevent flotation, collapse, release, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads including the effects of buoyancy.
  2. All development shall be constructed of material resistant to flood damage.
  3. All development shall be constructed by methods and practices that minimize flood damage.
  4. All development shall be constructed with materials resistant to flood damage with electrical, heating, ventilation, plumbing, 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.
  5. All development sites shall be adequately drained to reduce exposure to flood hazards.
  6. Water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems.
  7. Sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters.
  8. On-site disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

### **9.02 Zone A- District Regulations**

- (A) Review Standards for Development in Zone A
1. Development shall not be permitted in Zone A unless the applicant demonstrates that the cumulative effect of the proposed development, when combined with all other existing and anticipated encroachments, will not increase the base flood elevation more than 1.00 feet at any point within the community. The demonstration must be supported by technical data that conforms to standard hydraulic engineering

principles and certified by a professional engineer.

2. Beyond the additional requirement above in Section 9.02(A)(1), development shall meet the same requirements as if the proposal were in Zone AE (Section 9.03 for development in the floodway and Section 9.04 for development in the floodway fringe) except that, within the floodway fringe portion of Zone A, non-residential uses shall be elevated (Section 9.04(A)(2)(a)). Dry proofing (Section 9.04(A)(2)(b)) is prohibited in Zone A.

### **9.03 Zone AE-Floodway Sub-District Regulations**

(A) Floodway Review Standards: Except as outlined below, development within the floodway is prohibited.

1. Development within the floodway sub-district may be approved provided the applicant provides a hydrologic and hydraulic analysis, performed by a registered engineer in accordance with standard engineering practices, certifying that the proposed development will not:
  - a. result in any increase in flood levels (0.00 feet) during the occurrence of the base flood; and
  - b. increase any risk to surrounding properties, facilities, or structures from erosion or flooding.
2. In addition to provisions regulating substantial improvements (see Section 5) existing encroachments in the floodway may be altered or modified as described below:
  - a. Where the proposed development does not increase the exterior dimensions (i.e. footprint) of the structure, development may be approved without a hydrologic and hydraulic analysis provided the structure meets the requirements under section 9.04 of these regulations.
3. Landfilling, parking recreational vehicles (See Section 8.16), junkyards, and storage areas or facilities for floatable materials, chemicals, explosives, flammable liquids, or other hazardous or toxic materials are strictly prohibited within the floodway.
4. Public utilities may be placed underground and the hydrologic and hydraulic analyses may be waived, where a registered professional engineering certifies that there will be no change in grade and the utilities will be adequately protected from scour.

### **9.04 Zone AE-Floodway Fringe Sub-District Regulations**

(A) Review Standards for Development in Zone AE-Floodway Fringe: Development within the floodway fringe is regulated based on the classification of use- either residential or non-residential:

1. Residential structures. All development of residential structures including manufactured homes shall meet the following:

- a. The lowest floor, including basement, of all new and substantially improved structures shall be at least one foot above the base flood elevation. This can be achieved in one of three ways:
    - i. Elevated on fill. This is typical for slab construction or where structures are to be placed at grade and tied down. This is not an appropriate technique for primary structures due to the risk of scour and erosion undermining the structure.
    - ii. Elevated on piles, posts, piers or columns. This technique is typically used in areas with high velocity.
    - iii. Elevated on walls or a crawlspace. The third technique is to build on solid walls (i.e. slab on stem wall foundation or elevate building over crawlspace).
  - b. Unless stricter rules are described in this section, FEMA NFIP guidance such as the *NFIP Flood Plain Management Requirements- Desk Reference* and *FEMA 54- Elevated Residential Structures* shall be used to guide design and construction considerations.
2. **Non-Residential structures.** All development of non-residential structures shall meet one of the following:
- a. Elevation. Non-residential structures shall be elevated as required above (section 9.04(B)(1)). This is the preferred alternative for all structures. Where elevating the structure is not a viable option an applicant may propose to dry-proof the structure as described in (b).
  - b. Dry-proofing. Non-residential structures, together with their attendant utilities and sanitary facilities, which are proposed to be dry-proofed shall be designed to be watertight below the point one foot above the base flood elevation with walls substantially impermeable and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.
    - i. A permit for a structure proposed to be dry-proofed shall not be issued until a registered engineer or architect 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.
3. Fully enclosed areas below lowest floor. All development which has fully enclosed areas that are below base flood elevation may be permitted provided:
- a. These areas are solely used for parking vehicles, storage, or structure access.
  - b. These areas 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 be certified by a registered engineer or architect and include the following minimum criteria:
    - i. A minimum of 2 openings having a total net area of not less than 1 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 1 foot above grade.
    - iii. Openings may be equipped with screens, louvers, valves, or other coverings provided that they permit the automatic entry and exit of floodwaters.
4. Storage of materials and equipment. Junkyards are strictly prohibited from the

floodway fringe. Storage of floatable, hazardous, or toxic materials is permitted only when the material or tank is anchored to a pad that has been filled and graded to at least one foot above the base flood elevation.

5. Small accessory buildings. Development involving accessory structures that are 150 square feet or less may be permitted provided the proposal meets the requirements of a fully enclosed area below base flood elevation (Section 9.04(A)(3)). Alternatively these accessory structures shall:
  - a. Be used solely for parking vehicles, storage, or building access.
  - b. Be tied down by provision of over the top ties at each corner, with two additional ties per side at intermediate locations.
  - c. Be constructed and placed on the site so as to offer the minimum resistance to the flow of floodwaters;
  - d. Have service facilities, such as electrical and heating equipment, elevated or flood proofed to at least one foot above base flood elevation.

## **Section 10 Letters of Map Amendment and Revision**

### **10.01 General Information Regarding LOMAs, LOMR-Fs, and LOMRs**

- (A) As a part of FEMA's responsibility in implementing the NFIP, three procedures have been established to address critical components of the program. The three types of applications each have separate procedures for proposed and existing scenarios. The six Letters are:
1. **Letter of Map Amendment (LOMA).** A letter from FEMA stating that an existing structure or parcel of land that has not been elevated by fill would not be inundated by the base flood. This is generally used for existing properties where it is believed that the FIRM or FBFM map is incorrectly drawn therefore a structure or piece of land is mapped as being in the Flood Hazard Area but upon review by a surveyor or engineer it is found to be above the base flood elevation.
  2. **Conditional Letter of Map Amendment (CLOMA).** A letter from FEMA stating that a proposed structure that is not to be elevated by fill would not be inundated by the base flood if built as proposed. This is used in similar situations as a LOMA except that it involves proposed rather than existing structures or pieces of land.
  3. **Letter of Map Revision based on Fill (LOMR-F).** A letter from FEMA stating that an existing structure or parcel of land that has been elevated by fill would not be inundated by the base flood. This is generally required after an area in the Flood Hazard Area has been filled, in accordance with FEMA construction standards, resulting in land that is now above the base flood elevation.
  4. **Conditional Letter of Map Revision based on Fill (CLOMR-F).** A letter from FEMA stating that a parcel of land or proposed structure that will be elevated by fill would not be inundated by the base flood if fill is placed on the parcel as proposed or the structure is built as proposed. This is generally required by applicants seeking to fill in the Flood Hazard Area to make it suitable for development.
  5. **Letter of Map Revision (LOMR).** A letter from FEMA officially revising the current FIRM or FBFM map to show changes to the flood plains, floodways, or flood elevations.
  6. **Conditional Letter of Map Revision (CLOMR).** A letter from FEMA commenting on whether a proposed project, if built as proposed, would meet minimum NFIP standards or proposed hydrology changes. Similar to LOMR requests, these are generally used with proposed changes to BFE determinations.
- (B) It is the responsibility of the applicant to secure all required Letters from FEMA. Information provided herein should not be interpreted to be the rules that FEMA will use. Always contact FEMA for full details.

## **10.02 LOMAs and CLOMAs**

- (A) Where FEMA approves a LOMA the proposal or structure shall no longer be considered to be within the Flood Hazard Area and therefore no longer is required to meet the provisions of these Flood Hazard Area Regulations.
- (B) All LOMAs and CLOMAs, including final elevation certificates, shall be recorded by the Administrative Officer according to section 2.05.

## **10.03 LOMR-F and CLOMR-F**

- (A) Not all fill requires a LOMR-F. Only applications where the developer proposes to use fill to remove the structure from the Flood Hazard Area.
- (B) Filing CLOMR-F and LOMR-F applications. As a part of the CLOMR-F application, the Community Acknowledgement Form (Form 3) must be included. The Administrative Officer is required to sign this form and may, at his or her discretion, request comments from the DRB prior to returning the form to the applicant.
  - 1. Applicants are hereby informed that local requirements may be stricter than those required by FEMA. Where an application for a CLOMR-F or LOMR-F is requested which does not meet the stricter local requirements, the Administrative Officer shall make such comments on the Form and return the application to the applicant.
- (C) **IMPORTANT NOTES REGARDING CLOMA-F and LOMA-F.** Approval of a CLOMA-F or LOMA-F is not a substitute for a Flood Hazard Area Development permit. Approval of a CLOMA-F or LOMA-F is evidence in an application for a Flood Hazard Area Development permit. A Flood Hazard Area Development permit is required prior to any filling of the Flood Hazard Area.
  - 1. Once a CLOMR-F is approved by FEMA, a local application may be made to place fill in the Flood Hazard Area. The Administrative Officer shall review the CLOMR-F to ensure it meets the local regulations regarding filling of the Flood Hazard Area. Once the applicant has received the Flood Hazard Area Development permit, then the applicant may fill the flood hazard area as described in the permit.
  - 2. Upon completion of the filling, the applicant must apply for the LOMR-F from FEMA prior to any applications to develop the filled site. As a part of the application for the LOMR-F, an elevation certificate is required.
  - 3. Once FEMA approves the LOMR-F the proposal shall no longer be considered to be within the Flood Hazard Area and therefore no longer is required to meet the provisions of these Flood Hazard Area Regulations.
- (D) All LOMR-Fs and CLOMR-Fs, including final elevation certificates, shall be recorded by the Administrative Officer according to section 2.05.

#### **10.04 LOMR and CLOMR**

- (A) The City of Barre will require an application for a CLOMR prior to any application for a LOMR. These are letters from FEMA officially revising the current FIRM or FBFM map to change floodplain and floodway delineations or to alter or set base flood elevations at a location. The applicant will still be required to meet all provisions of this regulation in pursuit of the CLOMR or LOMR.
  
- (B) Filing CLOMR and LOMR applications. As a part of the CLOMR application, the Community Acknowledgement Form (Form 3) must be included. The Administrative Officer is required to sign this form and may, at his or her discretion, request comments from the DRB prior to returning the form to the applicant.
  - 1. Applicants are hereby informed that local requirements may be stricter than those required by FEMA. Where an application for a CLOMR or LOMR is requested which does not meet the stricter local requirements, the Administrative Officer shall make such comments on the Form and return the application to the applicant.
  
- (C) A permit cannot be issued for a project where a lower base flood elevation is proposed by a CLOMR until the final LOMR has been issued. A permit can be issued for the portion of the project not dependent on the changes that will result from the LOMR and condition the full permit upon receipt of the final LOMR.

## **Section 11. Definitions**

### **11.01 Interpretation of Definitions**

- (A) For the purpose of these regulations, the terms below shall have the following meanings unless a different meaning clearly appears from the context. Where a term is not defined herein, the definitions of the NFIP program and 44 CFR §59.1 may be applied.
1. AAP is abbreviation for Accepted Agricultural Practices as defined by the Commissioner of Agriculture.
  2. Accessory Structure is a structure which is: 1) detached from and clearly incidental and subordinate to the principal use of structure on a parcel, 2) located on the same parcel as the principal structure or use, and 3) clearly and customarily related to the principal structure or use. For residential uses these include, but may not be limited to garages, garden and tool sheds, play houses, and swimming pools.
  3. Accessory Use is a use which is customarily incidental and subordinate to the principal use of the lot or parcel of land, is located on the same lot or parcel as the primary use and is clearly related to the principal use.
  4. Act means the Vermont Planning and Development Act 24 V.S.A., Chapter 117.
  5. Adjoining Landowner means any person owning land contiguous to the proposed development including land separated by a road or road right of way.
  6. Administrative Officer shall mean the Administrative Officer, or the assistant Administrative Officer appointed in accordance with the provisions of Section 2.01 of these regulations.
  7. Area of special flood hazard is the same as flood hazard area.
  8. Base flood means a flood having a one percent chance of being equaled or exceeded in any given year (100 year flood).
  9. Base Flood Elevation (BFE) is the height of the base flood, usually in feet, in relation to the National Geodetic Vertical Datum of 1929, the North American Vertical Datum of 1988, or other datum referenced in the Flood Insurance Study report, or average depth of the base flood, usually in feet, above the ground surface.
  10. Basement means any area of a structure having its floor elevation below ground level on all sides.
  11. BFE is an abbreviation for Base Flood Elevation
  12. BMP is abbreviation for Best Management Practices as defined by the Commissioner of Agriculture.

13. Building means a structure, not readily moveable, consisting of a roof supported by columns or walls intended for the shelter or enclosure of persons, animals, or personal property including any storage tanks.
14. City means the City of Barre.
15. Demolished means the intentional deconstruction of a structure.
16. Destroyed means the unintentional loss of a structure.
17. Development means any human-made change to improved or unimproved real estate including but not limited to:
  - a. Construction, reconstruction, relocation, and placement of buildings and other structures;
  - b. Mining, dredging, filling, grading, paving, excavation and drilling operations;
  - c. The outdoor storage of equipment or materials;
  - d. Any change in use from residential to non-residential (or vice versa) of any structure or land or part thereof;
  - e. The division of a parcel containing lands within the flood hazard area into two or more parcels including boundary line adjustments.
18. DRB is abbreviation for the City of Barre Development Review Board.
19. Farming means (10 V.S.A. §6001(22)):
  - a. the cultivation or other use of land for growing food, fiber, Christmas trees, maple sap, or horticultural or orchard crops; or
  - b. the raising, feeding, or management of livestock, poultry, fish, or bees; or
  - c. the operation of a greenhouse; or
  - d. the production of maple syrup; or
  - e. the on-site storage, preparation and sale of agricultural products or wastes produced on the farm; or
  - f. the on-site production of fuel or power from agricultural products or wastes produced on the farm; or
  - g. the raising, feeding, or management, of four or more equines owned or boarded by the farmer, including training, showing, and providing instruction and lessons in riding, training, and the management of equines.
20. Farm structure is a building for housing livestock, raising horticultural or agronomic plants, or carrying out other practices associated with farming but excluding a dwelling for human habitation [§4413(d)].
21. FBFM is abbreviation for Flood Boundary and Floodway Map.
22. FEMA is abbreviation for Federal Emergency Management Agency.
23. Fill means any placed material that changes the natural grade or increases the

elevation of a structure on a site.

24. FIRM is abbreviation for Flood Insurance Rate Map.
25. Flood means (a) a general and temporary condition of partial or complete inundation of normally dry land from: the overflow of inland or tidal waters; the unusual and rapid accumulation or runoff of surface waters from any source; and mudslides which are proximately caused by flooding and are akin to a river of liquid and flowing mud on the surfaces of normally dry land areas, as when earth is carried by a current of water and deposited along the path of the current. (b) The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by the waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm or by an unanticipated force of nature, such as a flash flood or abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding.
26. Flood Boundary and Floodway Map (FBFM) means an official map of a community, issued by the Administrator, where the boundaries of the flood, and mudslide (i.e. mudflow) - related erosion areas having special hazards have been designated as Zones A, M, and/or E.
27. Flood Hazard Area is the land in the flood plain within a community subject to a one percent or greater chance of flooding in any given year. The area may be designated as Zone A on the Flood Hazard Area Map. After detailed ratemaking has been completed in preparation for publication of the FIRM, Zone A usually is refined into Zones A, AO, AH, AI-30, AE or A99. The term "flood hazard area" is synonymous in meaning with the terms "area of special flood hazard" and "special flood hazard area".
28. Flood Insurance Rate Map (FIRM) means an official map of a community, on which the Administrator has delineated both the special hazard areas and the risk premium zones applicable to the community.
29. Flood insurance study means an examination, evaluation, and determination of flood hazards and, if appropriate, corresponding water surface elevations.
30. 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 sanitary facilities, structures, and their contents.
31. Floodway means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot at any point. Also referred to as the regulatory floodway.

32. Forestry is the use and management of woodlands for purposes of timber production, harvesting, and management for commercial, wildlife and/or conservation purposes. This definition specifically excludes permanent sawmills, lumber yards and other similar facilities used for the processing and/or manufacturing of wood and wood products; but may include, as accessory uses, portable sawmills and equipment used on-site in association with timber harvesting activities.
33. Functionally dependent use is a use that must be located or carried out close to water- such as a docking or port facility necessary for unloading of cargo or passengers, shipbuilding and ship repair. [See variance standards under 3.02].
34. Historic structure means 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 district preliminarily determined by the Secretary of the Interior to qualify as a registered historic district;
  - c. individually listed on the Vermont Register of Historic Places; or
  - d. individually listed on a local inventory of historic places in communities with 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.
35. Interested Person means anyone meeting the definition of the term as set forth in the Act [§4465(b)]. The definition includes the following:
- a. A person owning title or property, or a municipality or solid waste management district empowered to condemn it or an interest in it, affected by law who alleges that such regulation imposes on such property unreasonable or inappropriate restrictions of present or potential use under the particular circumstances of the case.
  - b. The municipality in which the plan or a regulation of which is at issue in an appeal brought under this chapter or any municipality which adjoins such municipality.
  - c. A person owning or occupying property in the immediate neighborhood of a property that is the subject of any decision or act taken under the regulation, who can demonstrate a physical or environmental impact on the person's interest under the criteria reviewed, and who alleges that the decision or act, if confirmed, will not be in accord with the policies, purposes, or terms of the plan or regulation of the municipality.
  - d. Any ten (10) persons who may be any combination of voters or real property owners within a municipality listed in subdivision (b) above who, by signed petition to the DRB, the regulations of which is at issue in any appeal brought

under the Act, allege that the relief requested by a person under the Act, if granted will not be in accordance with the policies, purposes or terms of the plan or regulation of that municipality. This petition to the DRB must designate one person to serve as the representative of the petitioners regarding all matters related to the appeal.

- e. Any department and administrative subdivision of the state owning property or any interest therein within a municipality listed in subdivision (b) of this subsection, and the agency of commerce and community development.
36. Lowest Floor means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicle, building access, or storage in an area other than a basement area is not considered a structure'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 Section 60.3 of the Federal Register.
  37. 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 connected to the required utilities. For flood plain 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.
  38. Manufactured home park means a parcel of land containing two or more manufactured homes for use as residences.
  39. Minor internal improvement is any development within an existing structure which does not otherwise require a zoning permit or building permit, and the cost of such improvement is less than \$500 in value.
  40. NFIP is abbreviation for National Flood Insurance Program.
  41. Parcel is any contiguous piece of land in single ownership and not divided by a public or private highway, with defined boundaries created by an act of subdivision.
  42. Permit is same as Flood Hazard Area Development permit.
  43. Public Highways means any state highway and any class 1, 2, 3, or 4 city highway.
  44. Recreational vehicle means a vehicle which is: (a) Built on a single chassis; (b) 400 square feet or less when measured at the largest horizontal projection; (c) Designed to be self-propelled or permanently towable by a light duty truck; and (d) designed primarily not for use as a permanent dwelling but as a temporary living quarters for recreational, camping, travel, or seasonal use.
  45. Regulatory floodway in the City of Barre *See Floodway*
  46. Repetitive loss means flood-related damage sustained by a structure on two

separate occasions during a ten year period for which the cost of repairs at the time of each such flood event, on the average, equals or exceeds 25 percent of the market value of the structure before the damage occurred.

47. Special Flood Hazard Area *See Flood Hazard Area*
48. Structure means an assembly of materials for occupancy or use, including but not limited to, a walled and roofed building, a gas or liquid storage tank (either above or below the ground), other buildings, manufactured home, billboard, sign, wall, or fence.
49. 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 (See Section 5.02).
50. Substantial improvement means any repair, reconstruction, rehabilitation, addition, or other improvement of a structure after the date of adoption of this bylaw, the cost of which, over three years or over the period of a common plan of development, cumulatively 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 previously identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions or (b) Any alteration of an "historic structure," provided that the alteration will not preclude the structure's continued designation as an "historic structure.
51. Violation means the failure of any development to be fully compliant with these regulations including any failure to provide documentation of a required elevation certificate, certificate of compliance, or any other certificate or other evidence of compliance required under these regulations.
52. V.S.A. is abbreviation for Vermont Statutes Annotated.

## **11.02 Additional Definitions**

- (A) As a result of NFIP requirements, these regulations must define certain words or phrases which do not appear in these regulations. These words or phrases are listed below with their definitions.
  1. Existing manufactured home park or subdivision means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of roads, and either final site grading or the pouring of

concrete pads) is completed before April 15, 1974.

2. Expansion to an existing manufactured home park or subdivision means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of roads, and either final site grading or pouring of concrete pads).
3. New construction under these regulations means structures for which the start of construction commenced on or after the effective date of the floodplain management regulation adopted by the community and includes any subsequent improvements to such structures.
4. New manufactured home park or subdivision means a manufactured home park or subdivision for the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of roads, and either final grading or the pouring of concrete pads) is completed on or after the effective date of the floodplain management regulations adopted by the community.
5. Start of construction includes substantial improvement and means the date the building permit was issued provided the actual start on construction or repair, reconstruction, rehabilitation, addition 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 roads and/or walkways; nor does it include excavation for a basement, footing, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, regardless whether that alteration affects the external dimension of the building.