

ARTICLE 7 OVERLAY ZONES

Section 7.1 Forest Neighborhood Overlay Zone

7.1.1 Purpose

It is the purpose of this zone to implement the recommendations of the Plan of Conservation and Development by applying special standards to residential development so as to protect identified forest resources.

7.1.2 Requirements

The extent of the Forest Neighborhood Overlay Zone is shown on the Zoning Map. In order to encourage open space areas which can be protective of forest resources, the following standards shall apply: (See Section 4.2.2 for illustration on calculating density)

1. The density factor in the RR Zone shall be 0.62.
2. The density factor in the R-25 Zone shall be 1.1.
3. Subdivisions of 4 or less proposed lots with frontage on an existing public street are exempted from the requirements of this Section. This provision shall not apply to re-subdivisions.

Section 7.2 Riverfront Overlay Zone

7.2.1 Purpose and Intent

It is the purpose of this zone to allow and encourage river related commercial and recreational uses which would not be otherwise possible in the underlying zone.

7.2.2 Description of Zone

The RO is a zone superimposed upon and in addition to the underlying zones. It provides for additional uses and additional zoning standards. Unless otherwise stated, uses and standards of the underlying zones shall also apply.

7.2.3 Uses

- A. In addition to the uses allowed in Section 4.1 Residential Permitted Uses, Section 5.1 Business Permitted Uses, and Section 6.1 Industrial Permitted Uses for the underlying zones, the following uses are also allowed:
 1. Restaurants, to include outdoor dining;
 2. Outdoor recreational uses to include swimming, hiking, boating, scuba diving, rock climbing, and associated retail operations;
 3. Camping in accordance with Section 9.14
 4. Athletic entertainment enterprises such as mini golf, batting cages, in-line skating and associated retail operations; and
 5. Other uses deemed by the Commission to be water dependent and appropriate for the area.

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7.2.4 Other Standards

- A. Up to 50% of required parking may be waived when it has been documented that there is adequate parking and/or pedestrian access within 1,000 feet of the property under consideration.
- B. Uses allowed under this overlay zone are permitted by site plan approval.

Section 7.3 Town Center Village District

7.3.1 Purpose and Intent

It is the purpose of this zone to ensure that the unique character of this district is maintained for future generations in accordance with Connecticut General Statutes Section 8-2j Village Districts. The provisions of this zone are intended to preserve and enhance the character of the Town Center Village District by encouraging the preservation of sites and buildings of unique historical and architectural value and assuring that new structures and uses will be in keeping with the established character of the area.

7.3.2 Plan of Conservation and Development

In administering this provision of the Zoning Regulations, due regard shall be given to the Historic Resources Plan contained in the Plan of Conservation and Development, as well as to "The History and Architecture of Portland" by Loether, Porteus, and Sherrow, 1980.

7.3.3 Uses

- A. In the Town Center Village District, allowed uses shall be those permitted in the B-3 Zone with the following modifications:
 - 1. The following B-3 Zone uses are not allowed:
 - a. Convalescent Homes, Hospitals and Health Care Institutions
 - b. Earth Removal Operations
 - c. Drive-thru window service for other than restaurants and other food service establishments, unless located in the rear of a building and not accessible from Main Street.
 - 2. The following additional uses are permitted by Site Plan approval:
 - a. Package and Liquor Stores
 - b. Museums and other tourist attractions
 - c. Self Service Laundries

7.3.4 Applications

- A. Prior to any proposed new construction, substantial reconstruction and rehabilitation of properties within the District and in view from public roadways, Special Exception and Site Plan approval applications shall be submitted to demonstrate compliance with these regulations.
- B. These regulations shall not apply to single family structures.

7.3.5 General Design Criteria

- A. Proposed buildings and modifications to existing buildings shall be constructed with appropriate materials and of building designs appropriate for a scenic and historic New England town, recognizing architectural scale, rhythm and proportion, and shall avoid large monolithic building forms.
- B. Proposed buildings or modifications to existing buildings shall be harmoniously related to their surroundings, the terrain in the district and to the use, scale and architecture of existing buildings in the district that have a functional or visual relationship to the proposed building or modification.
- C. Proposed buildings and modifications to existing buildings shall be consistent with the Connecticut Historical Commission - Secretary of the Interior's Standards for Rehabilitation, as applicable.
- D. All spaces, structures and related site improvements visible from public roadways shall be designed to be compatible with the elements of the area of the village district in and around the proposed building or modification.
- E. The color, size, height, location, proportion of openings, roof treatments, building materials and landscaping of the property that is to be improved and any proposed signs and lighting shall be evaluated for compatibility with the local architectural motif and the maintenance of views, historic buildings, monuments and landscaping.
- F. The removal or disruption of historic, traditional or significant structures or architectural elements shall be minimized.

7.3.6 Compatibility Criteria

- A. The building and layout of buildings and included site improvements shall reinforce existing buildings and streetscape patterns and the placement of buildings and included site improvements shall assure there is no adverse impact on the district;
- B. Proposed streets shall be connected to the existing District road network, wherever possible;
- C. Open spaces within the proposed development shall reinforce open space patterns of the district, in form and siting;
- D. Locally significant features of the site such as distinctive buildings or sight lines of vistas from within the District, shall be integrated into the site design;
- E. The landscape design shall complement the district's landscape patterns;
- F. The exterior signs, site lighting and accessory structures shall support a uniform architectural theme and be compatible with their surroundings; and
- G. The scale, proportions, massing and detailing of any proposed building shall be in proportion to the scale, proportion, massing and detailing in the District.

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7.3.7 Professional Design Review

- A. The Commission shall hire a Village District Consultant, who shall be an architect, landscape architect or certified planner, with pertinent experience, to review the design of new construction and exterior rehabilitation of all properties within the district in accordance with such Design Guidelines as shall be adopted by the Commission from time to time. Copies of said Design Guidelines shall be available in the Planning Department and Office of the Town Clerk. The report of such consultant shall be entered into the public hearing record and considered by the Commission in making its decision.
- B. The replacement of existing windows, doors, siding, and roof shingles with treatments of substantially the same size, design, shape, texture and color may be approved administratively. Whether the proposed improvements must be referred to the Village District Consultant is within the Zoning Enforcement Officer's discretion.
- C. The costs of hiring a Village District Consultant shall be included in the application fee.

Section 7.4 Flood Plain Zone/Special Flood Hazard Area Regulations

7.4.1 Statutory Authorization, Finding of Fact, Purpose, Objectives & Severability

- A. **Statutory Authorization:** The Legislature of the State of Connecticut has in Title 7, Chapter 98, Section 7-148(c)(7)(A) and in Title 8, Chapter 124, Section 8-2 of the General Statutes delegated the responsibility to local governmental units to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry. Therefore, the Planning and Zoning Commission of the Town of Portland, Connecticut, does ordain as follows:
- B. **Findings of Fact:** The flood hazard areas of the Town of Portland are subject to periodic flood inundation which could result in the loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety and general welfare.

These flood losses are caused by the cumulative effect of obstructions in the floodplains causing increases in flood heights and velocities, and by the occupancy in flood hazard areas by uses vulnerable to floods or hazards to other lands which are inadequately elevated, floodproofed, or otherwise unprotected from flood damage. Uncontrolled development and use of the floodplains can adversely affect the community.

- C. **Statement of Purpose:** It is the purpose of this regulation to regulate floodplain development, promote public health, safety, and general welfare, and minimize public and private losses due to flood conditions in specific areas by provisions designed to:
 1. Restrict or prohibit uses which are dangerous to health, safety and property due to water or erosion hazards, or which result in damaging increases in erosion or in flood heights or velocities;
 2. Require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;
 3. Control the alteration of natural floodplains, stream channels and natural protective barriers which are involved in the accommodation of flood waters;

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4. Control filling, grading, dredging and other development which may increase erosion or flood damage; and
 5. Prevent or regulate the construction of flood barriers which will unnaturally divert flood waters or which may increase flood hazards to other lands.
- D. Objectives: The objectives of this regulation are:
1. To protect human life and health;
 2. To minimize expenditure of public money for costly flood control projects;
 3. To minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
 4. To minimize prolonged business interruptions;
 5. To minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets and bridges located in floodplains;
 6. To help maintain a stable tax base by providing for the sound use and development of flood prone areas in such a manner as to minimize flood blight areas;
 7. To insure that potential home buyers are notified that property is in a flood hazard area; and
 8. To ensure continued eligibility of owners of property in the Town of Portland for participation in the National Flood Insurance Program.
- E. Severability: If any section, subsection, paragraph, sentence, clause, or phrase of these regulations should be declared invalid for any reason whatsoever, such decision shall not affect the remaining portions of these regulations, which shall remain in full force and effect; and to this end the provisions of these regulations are hereby declared to be severable.

7.4.2 Definitions

Unless specifically defined below, words or phrases used in these regulations shall be interpreted so as to give them the meaning they have in common usage and to give these regulations its most reasonable application.

- A. "Accessory Structure" means an appurtenant, unfinished structure of less than 401 square feet, the use of which shall be incidental or subordinate to the principal use of the parcel of the principal structure on the parcel, and which shall not be used for human habitation.
- B. "Addition (to an existing building)" means any walled and roofed expansion to the perimeter of a building in which the addition is connected by a common load-bearing wall other than a fire wall. Any walled and roofed addition which is connected by a fire wall or is separated by independent perimeter load-bearing walls is new construction.
- C. "Appeal" means either (a) a request for review of the Town Engineer's decision relative to the provisions of these regulations or (b) a request for a variance from the requirements of these regulations.
- D. "Area of Shallow Flooding" - A designated AO, AH, AR/AO, AR/AH, or VO zone on a community's Flood Insurance Rate Map (FIRM) with a one percent or greater annual chance of flooding to an average depth of one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable, and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

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- E. "Base flood" means the flood having one percent chance of being equaled or exceeded in any given year.
- F. "Base Flood Elevation (BFE)" means the elevation of the crest of the base flood (100-year flood). The height in relation to mean sea level (NAVD of 1988) expected to be reached by the waters of the base flood at pertinent points in the floodplains of coastal and riverine areas.
- G. "Basement" means that portion of a building having its floor below ground level on all sides, and which exceeds a depth of forty-eight (48) inches as measured from the underside of the floor joist to the basement floor.
- H. "Breakaway Wall" means a wall that is not part of the structural support of the building, intended through its design and construction to collapse under specific lateral wind and water loading conditions without causing collapse, displacement, or other structural damage to the elevated portion of the building or supporting foundation system.
- I. "Building" means any structure built for support, shelter, or enclosure for any occupancy or storage.
- J. "Cost" as related to substantial improvements, means the cost of any reconstruction, rehabilitation, addition, alteration, repair or other improvement of a structure which shall be established by a detailed written contractor's estimate. The estimate shall include, but not be limited to: the cost of materials (interior finishing components, structural components, utility and service equipment); sales tax on materials, building equipment and fixtures, including heating and air conditioning and utility meters, labor; built-in appliances; demolition and site preparation; repairs made to damaged parts of the building worked on at the same time; contractor's overhead; contractor's profit; and grand total. Items to be excluded: cost of plans and specifications; survey costs; permit fees; outside improvements such as septic systems, water supply wells, landscaping, sidewalks, fences, yard lights, irrigation systems, and detached structures such as garages, sheds, and gazebos.
- K. "Crawl Space" for the purpose of these regulations means that portion of a building below the lowest floor, having its floor below ground level on all sides, and which is forty-eight (48) inches or less in depth as measured from the underside of the floor joist to the crawl space floor.
- L. "Critical Facility" means a development which is critical to the community's public health and safety, is essential to the orderly functioning of a community, stores or produces highly volatile, toxic or water-reactive materials, or houses occupants that may be insufficiently mobile to avoid loss of life or injury. Examples of critical facilities include: jails, hospitals, fire stations, police stations, nursing homes, wastewater treatment facilities, drinking water plants, and gas/oil/propane storage facilities.
- M. "Development" means any man-made change to improved or unimproved real estate, including, but not limited to, buildings, additions, accessory structure or other structures, new construction, substantial improvements, mining, dredging, filling, grading, paving, excavating, drilling operations, or permanent storage of materials or equipment.
- N. "Elevated Building" means a non-basement building to have the lowest floor elevated above the ground level by means of fill, solid foundation perimeter walls, pilings, columns, posts, piers, shear walls, or breakaway walls, as allowed under applicable standards.
- O. "Federal Emergency Management Agency (FEMA)" means the federal agency that administers the National Flood Insurance Program (NFIP).
- P. "Finished Living Space" means finished living space can include, but is not limited to, a space that is heated and/or cooled, contains finished floors (tile, linoleum, hardwood, etc.), has sheetrock walls that may or may not be painted or wallpapered, and other amenities such as furniture, appliances, bathrooms, fireplaces and other items that are easily damaged by floodwaters and expensive to clean, repair or replace. A fully enclosed area below the base flood elevation (BFE) cannot have finished living space and needs to be designed for exposure to flood forces and can only be used for parking, building access or limited storage.

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- Q. "Flood" or "flooding" means a general and temporary condition of partial or complete inundation of normally dry land areas from: (a) the overflow of inland or tidal waters; and/or (b) the unusual and rapid accumulation of runoff of surface waters from any source.
- R. Flood Insurance Rate Map (FIRM) – The official map of a community on which the Federal Emergency Management Agency (FEMA) has delineated both the special flood hazard areas (100-year floodplain) and the insurance risk premium zones applicable to a community. FIRM published after January 1990 may also show the limits of the regulatory floodway.
- S. Flood Insurance Study (FIS) – The official study of a community in which the Federal Emergency Management Agency (FEMA) has conducted a technical engineering evaluation and determination of local flood hazards, flood profiles and water surface elevations. The Flood Insurance Rate Maps (FIRM), which accompany the FIS, provide both flood insurance rate zones and base flood elevations, and may provide the regulatory floodway limits.
- T. "Floodproofing" means any combination of structural and non-structural additions, changes or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.
- U. "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.
- V. "Floor" means the top surface of an enclosed area in a building (including basement) i.e., top of slab in concrete slab construction or top of wood flooring in wood frame construction. The term does not include the floor of a garage used solely for parking of vehicles.
- W. "Functionally Dependent Facility" means a facility which cannot be used for its intended purpose unless it is located in close proximity to water, such as a docking or port facility necessary for the loading and unloading of cargo or passengers, shipbuilding, ship repair, or seafood processing facilities. The term does not include long-term storage, sales, or service facilities.
- X. "Highest Adjacent Grade" means the highest natural elevation of the ground surface, prior to construction, next to the proposed walls of a structure.
- Y. "Historic Structure" means any structure that is:
 - 1. Listed individually in the National Register of Historic Places (a listing maintained by the Department of the Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
 - 2. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historic significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
 - 3. Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or
 - 4. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
 - a. By an approved state program as determined by the Secretary of the Interior; or
 - b. Directly by the Secretary of the Interior in states without approved programs.

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- z. "Lowest Floor" means the lowest floor of the lowest enclosed area (including basement). A crawl space, or an unfinished or flood-resistant enclosure, usable solely for parking of vehicles, building access or storage, in an area other than a basement area is not considered a building's lowest floor, provided that such an area meets the requirements of Sections 7.6.6.C.3 and 7.6.6.A.9 hereof.
- AA. "Manufactured Home" means a structure, transportable in one or more sections, which is built on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities. Recreational vehicles and similar transportable structures placed on a site for 180 consecutive days or longer shall be considered manufactured homes for the purpose of these regulations.
- BB. "Manufactured Home Park or Subdivision" means a parcel, or contiguous parcels, of land divided into two or more manufactured home lots for rent or sale.
- CC. "Market Value" means that the market value of the structure shall be determined by the property's tax assessment, minus land value; or, an independent appraisal by a professional appraiser.
- DD. "Mean Sea Level (MSL)" means the North American Vertical Datum (NAVD) of 1988 or other datum, to which base flood elevations shown on a community's Flood Insurance Rate Map (FIRM) are referenced.
- EE. "New Construction" means structures for which the "start of construction" commenced on or after July 3, 1978, and includes any subsequent improvements to such structures.
- FF. "Recreational Vehicle" means a vehicle which is (i) built on a single chassis, (ii) 400 square feet or less when measured at the largest horizontal projections; (iii) designed to be self-propelled or permanently towable by a light-duty truck; and (iv) designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.
- GG. "Special Flood Hazard Area (SFHA)" means the land in the floodplain within a community subject to a one (1) percent or greater chance of flooding in any given year. SFHAs are determined utilizing the base flood elevations (BFE) provided on the flood profiles in the Flood Insurance Study (FIS) for a community. BFEs provided on Flood Insurance Rate Map (FIRM) are only approximate (rounded up or down) and should be verified with the BFEs published in the FIS for a specific location. SFHAs include, but are not necessarily limited to, the land shown as Zones A, AE and the Coastal High Hazard Areas shown as Zone VE on a FIRM. The SFHA is also called the Area of Special Flood Hazard.
- HH. "Start of Construction" (for other than new construction or substantial improvements under the Coastal Barrier Resources Act (P.L. 97-348)), includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, or improvement was within 180 days of the permit date. The actual start means the first placement of permanent construction of a structure (including a manufactured home) on a site, such as the pouring of slabs or footings, installation of piles, construction of columns, or any work beyond the stage of excavation or placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. 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, whether or not that alteration affects the external dimensions of the building.
- II. "Structure" means a walled and roofed building that is principally above ground, a manufactured home or a gas or liquid storage tank.
- JJ. "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.

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- KK. "Substantial Improvement" means any combination of repairs, re-construction, alteration, or improvements to a structure taking place within a ten (10) year period, in which the cumulative cost equals or exceeds fifty percent of the market value of the structure. The market value of the structure should be the appraised value of the structure using the cost approach to value prior to the start of the initial repair or improvement, or (2) in case of damage, the value of the structure prior to the damage occurring. For the purposes of this definition, "Substantial Improvement" is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. The term does not, however, include any improvement project required to comply with existing health, sanitary or safety code specifications which are solely necessary to assure safe living conditions.
- LL. "Variance" is a grant of relief from the requirements of these regulations which permits construction in a manner otherwise prohibited by these regulations where specific enforcement would result in unnecessary hardship. Such hardship shall be based on the unusual physical characteristics of the property in question which are not shared by adjacent parcels; hardship shall not be based on the structure, nor on economic or personal hardships.
- MM. "Violation" means failure of a structure or other development to be fully compliant with the community's floodplain management regulations. A structure or other development without required permits, lowest floor elevation documentation, flood-proofing certificates or required floodway encroachment calculations is presumed to be in violation until such time as that documentation is provided.
- NN. "Water Surface Elevation" means the height, in relation to the National Geodetic Vertical Datum (NGVD) of 1929.

7.4.3 General Provisions

- A. These regulations shall apply to all special flood hazard areas within the jurisdiction of the Town of Portland.
- B. Basis for Establishing the Special Flood Hazard Areas:
The special flood hazard areas identified by the Federal Emergency Management Agency in its Flood Insurance Study for the Town of Portland dated August 28, 2008 with accompanying Flood Insurance Rate Maps dated August 28, 2008, and any subsequent revisions thereto, are adopted by reference and declared to be part of this regulation. Since mapping is legally adopted by reference into the regulation it must take precedence when more restrictive until such time as a map amendment is obtained.
- C. Establishment of the Flood Hazard Area Permit
As per Zoning Regulation Section 11.1.1, an application for a Zoning Permit shall be required prior to the commencement of any development activities.
1. Permit Expiration: Permits issued under these regulations shall expire if actual construction of a permitted structure does not commence within 180 days of the permit approval date, or if for good cause shown, a 180 day extension is granted prior to the expiration of the original permit.
- D. Compliance
No structure or land shall hereafter be located, extended, converted, modified or structurally altered without full compliance with the terms of these regulations and other applicable regulations.
- E. Abrogation and Greater Restrictions
This Regulation is not intended to repeal, abrogate or impair any existing easements, covenants, or deed restrictions. Where these regulations and another conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

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commenced within any Special Flood Hazard Area until a zoning permit has been issued.

Such zoning permit application shall be accompanied by two sets of plans drawn to scale showing, at a minimum, the property lines and location of the parcel; existing and proposed contours; existing or proposed structures, fill, storage of materials, drainage facilities and the location of the foregoing. The following information shall also be required in connection with all applications:

1. Application Stage

- a. Elevation in relation to mean sea level of the proposed lowest floor, including basement, crawl space slab, and garage slab, of all structures (Sections 7.4.6.C.1 – 7.4.6.C.3);
- b. Elevation in relation to mean sea level to which any non-residential structure will be flood-proofed (Section 7.4.6.C.2.b);
- c. Description of the extent to which any watercourse will be altered or relocated as a result of proposed development (Section 7.4.6.A.8);
- d. A statement as to whether or not the proposed alterations to an existing structure meet the criteria of the substantial improvement definition (Section 7.4.2.KK);
- e. Architectural and structural drawings for any proposed building, including floor plans, elevations and typical sections, if requested;
- f. Plans and details for any proposed breakaway walls, including a Certification that: a) Breakaway wall collapse shall result from a water load less than that which would occur during the base flood; and b) the elevated portion of the building and supporting foundation system shall not be subject to collapse, displacement or other structural damage due to the effects of wind and water loads acting simultaneously on all building components (structural and nonstructural). Maximum wind and water loading values to be used in this determination shall each have a 1 percent chance of being equaled or exceeded in any given year (100 year mean recurrence interval);
- g. Certification as to use of floodproofing for non-residential structures, as required by Section 7.4.6.C.2.b;
- h. Certification as to the provisions of Section 5.3.3 governing fully-enclosed areas below base flood elevation, if the minimum design criteria in Sections 7.4.6.C.3.a.1 – 7.4.6.C.3.a.3 is not used;
- i. Certification of Compliance with the floodway standards contained in Sections 7.4.6.B.2 and;

2. Construction Stage

Upon completion of the applicable portion of construction, the applicant shall provide verification to the Town Engineer of the following as is applicable:

- a. For a structure in Zones A and AE, provide the elevation of the top of the lowest floor (including basement). An elevation certificate prepared by a Connecticut licensed land surveyor, engineer or architect must be provided; or

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- b. For a structure in Zone VE, provide the elevation of the lowest horizontal structural member (excluding pilings or columns). An elevation certificate prepared by a Connecticut licensed land surveyor, engineer or architect must be provided; or
- c. For a non-residential structure that has been dry flood-proofed provide the elevation to which the flood-proofing is effective (BFE plus one foot for insurance purposes). A FEMA Floodproofing Certificate (FEMA Form 81-65) prepared by a Connecticut licensed engineer or architect retained by the applicant must be provided.

3. Compliance

Deficiencies in the lowest floor elevations and any other requirements of the Regulations or other conditions of approval shall be corrected by the permit holder immediately and prior to further progressive work being permitted to proceed. Failure to make corrections required hereby shall be cause for issuance a stop-work order.

D. Duties and Responsibilities of the Portland Town Engineer

In the administration of these Regulations, the Portland Town Engineer shall perform the following duties when requested by the Zoning Enforcement Officer, among others:

1. Application Stage

- a. Review all development permits to assure that the requirements of these regulations have been satisfied;
- b. Advise permittee that additional Federal or State permits may be required, and if specific Federal or State permit requirements are known, require that copies of such permits be provided and maintained on file with the Application for Certificate of Zoning Compliance. Such additional permit requirements may include, but not be limited to: Coastal Area Management Permit, Water Diversion Permit, Dam Safety Permit, Corps of Engineers 401 & 404 Permits;
- c. Notify adjacent communities and the Department of Environmental Protection, Inland Water Resources Management Division prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency;
- d. Require, as a condition of any approval, that the flood carrying capacity within an altered or relocated portion of any watercourse is maintained;
- e. Make the necessary interpretation, where needed, as to the exact location of boundaries of the special flood hazard areas. Any person contesting the interpretation of the location of a boundary shall be given a reasonable opportunity to appeal the interpretation as provided in this article;
- f. Require the applicant to provide base flood elevation data for all proposed development and subdivisions, which are five acres or fifty lots, which ever occurs first, and are located in Zone A; and
- g. Obtain, review and reasonably utilize any base flood elevation and floodway data available from a Federal, State or other source, including data developed pursuant to

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Section 7.4.5.D.1.f of these regulations, in order to administer the provisions of Section 7.4.6.c, when base flood elevation data or floodway have not been provided in accordance with Sections 7.4.3.B.

2. Construction Stage

- a. Obtain, record and maintain the as-built elevation in relation to mean sea level of the lowest floor, including basement, of all new construction, or substantially improvement or repair to a structure that has sustained substantial damage. The Town Engineer shall require and maintain Elevation Certificates provided by the applicant and prepared by a Connecticut licensed land surveyor, engineer or architect containing this information;
- b. Obtain, record and maintain the elevation in relation to mean sea level to which all new construction, substantial improvements or repair to a structure that has sustained substantial damage has been flood-proofed. The Town Engineer shall require and maintain FEMA Floodproofing Certificates for Non-Residential Structures (FEMA Form 81-65). A Floodproofing Certificate shall be provided by the applicant and prepared by a Connecticut licensed engineer or architect containing this information;
- c. Maintain all records pertaining to the provisions of these regulations.

7.4.6 Provisions for Flood Hazard Reduction

A. General Standards: In all special flood hazard areas the following provisions shall apply:

1. New construction and substantial improvements shall be anchored to prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;
2. New construction and substantial improvements shall be constructed with materials resistant to flood damage;
3. New construction or substantial improvements shall be constructed by methods and practices that minimize flood damage;
4. Electrical, heating, ventilation, plumbing, air conditioning equipment, and other service facilities shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding;
5. New and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system;
6. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the system into flood waters;
7. On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during flooding; and
8. In any portion of a watercourse which is altered or relocated, the flood carrying capacity shall be maintained.
9. Accessory Structures:
 - a. In Zones A and AE, the requirement of Sections 7.4.6.C.2.a and 7.4.6.C.2.b shall not apply to the following:
 - 1) A one-story attached garage, provided said garage is not an integral part of a residential structure, and that any upper loft floors shall neither be accessible, nor reasonably modified to be accessible, from the residential structure. In addition, the

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use of any such upper loft floor shall be limited solely for storage purposes;

- 2) Accessory buildings, which are less than 401 square feet in floor area and are accessory to a residential structure; and
 - 3) One-story row garages located on a lot in a residential district containing multiple dwelling units.
- b. Accessory buildings and attached garages as defined in Section 7.4.6.A.9 shall conform to the following:
- 1) Shall not be used for human habitation;
 - 2) Shall be designed to have low flood damage potential and constructed with flood resistance materials below the base flood elevation;
 - 3) Shall be constructed and placed on the building site so as to offer the minimum resistance to the flow of floodwaters;
 - 4) Shall be firmly anchored to prevent flotation which may result in damage to their structures;
 - 5) Shall have all service facilities, such as electrical and heating equipment, designed and/or located so as to prevent water from entering or accumulating within components during conditions of flooding or elevated above base flood elevation; and
 - 6) There shall be no basement or excavated area below any accessory building or garage.
10. **Manufactured Homes:** Manufactured homes are prohibited in all special flood hazard areas.
11. **Aboveground Oil Tanks:** Above-ground storage tanks (oil, propane, etc.) which are located outside or inside of the structure must either be elevated above the base flood elevation (BFE) on a concrete pad, or be securely anchored with tie-down straps to prevent flotation or lateral movement, have the top of the fill pipe extended above the BFE, and have a screw fill cap that does not allow for the infiltration of flood water.
12. **Portion of Structure in Flood Zone:** If any portion of a structure lies within the Special Flood Hazard Area (SFHA), the entire structure is considered to be in the SFHA. The entire structure must meet the construction requirements of the flood zone. The structure includes any attached additions, garages, decks, sunrooms, or any other structure attached to the main structure. Decks or porches that extend into a more restrictive flood zone will require the entire structure to meet the standards of the more restrictive zone.
13. **Structures in Two Flood Zones:** If a structure lies within two or more flood zones, the construction standards of the most restrictive zone apply to the entire structure (i.e., VE zone is more restrictive than AE zone; structure must be built to the highest BFE). The structure includes any attached additions, garages, decks, sunrooms, or any other structure attached to the main structure. (Decks or porches that extend into a more restrictive zone will require the entire structure to meet the requirements of the more restrictive zone.)
14. **Equal Conveyance:** Within the floodplain, except those areas which are tidally influenced, as designated on the Flood Insurance Rate Map (FIRM) for the community, encroachments resulting from filling, new construction or substantial improvements involving an increase in footprint of the structure, are prohibited unless the applicant provides certification by a

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registered professional engineer demonstrating, with supporting hydrologic and hydraulic analyses performed in accordance with standard engineering practice, that such encroachments shall not result in any (0.00 feet) increase in flood levels (base flood elevation). Work within the floodplain and the land adjacent to the floodplain, including work to provide compensatory storage shall not be constructed in such a way so as to cause an increase in flood levels or flood velocity.

15. **Compensatory Storage:** The water holding capacity of the floodplain, except those areas that are tidally influenced, shall not be reduced. Any reduction caused by filling, new construction, or substantial improvements involving an increase in footprint to the structure shall be compensated for by deepening and/or widening of the floodplain. Storage shall be provided on-site, unless easements have been gained from adjacent property owners; it shall be provided within the same hydraulic reach and a volume not previously used for flood storage; it shall be hydraulically comparable and incrementally equal to the theoretical volume of flood water at each elevation, up to and including the 100-year flood elevation, which would be displaced by the proposed project. Such compensatory volume shall have an unrestricted hydraulic connection to the same waterway or water body. Compensatory storage can be provided off-site if approved by the municipality.

B. Standards for Stream without Established Base Flood Elevations, Floodways and/or Flood Mapping

1. The Town Engineer shall obtain, review and reasonably utilize any base flood elevation and floodway data available from a Federal, State or other source, including data developed pursuant to Section 7.4.5.D.1.f or Section 7.4.7.D of these regulations as criteria for requiring that new construction, substantial improvements, or other development in Zone A on the Community's FIRM meet the standards in 7.4.6.C.
2. In A zones where base flood elevations have been determined, but before a floodway is designated, no new construction, substantial improvement, or other development, including fill, shall be permitted which will increase base flood elevations more than one foot at any point along the watercourse when all anticipated development is considered cumulatively with the proposed development.
3. The Town Engineer may request floodway data of an applicant for watercourses without FEMA-published floodways. When such data is provided by an applicant or whenever such data is available from any other source, in response to the Town's Engineer request or not, the Town of Portland shall adopt a regulatory floodway based on the principle that the floodway must be able to convey the waters of the base flood without increasing the water surface elevation more than one foot at any point along the watercourse.
4. The Town Engineer shall obtain, review and reasonably utilize any base flood elevation and floodway data available from a Federal, State or other source, as criteria for requiring that new construction, substantial improvements, or other development in any area of potential, demonstrable or historical flooding within the community meet the standards in Section 7.4.6.C.

C. Specific Standards

In all special flood hazard areas A and AE, where base flood elevation data has been provided, the following provisions shall apply in addition to all general standards contained in Section 7.4.6.A.

1. **Residential construction:** New construction or substantial improvement of any existing residential structure shall have the lowest floor, including basement, elevated at least to the base flood elevation.
2. **Non-Residential Construction:**

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- a. New construction or substantial improvement of any commercial, industrial, or non-residential structure located in Zone A or AE, shall have the lowest floor, including basement, elevated at least to the base flood elevation; or
 - b. Non-residential structures located in all A and AE zones may be flood-proofed in lieu of being elevated provided that together with all attendant utilities and sanitary facilities the areas of the structure below the required elevation are water tight with walls substantially impermeable to the passage of water, and use structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy. A registered professional engineer or architect shall review and/or develop structural design specifications and plans for the construction, and shall certify that the design and methods of construction are in accordance with acceptable standards of practice for meeting the provisions of this subsection. Such certification shall be provided to the Portland Town Engineer.
3. Fully-Enclosed Areas Below Base Flood Elevation:

New construction or substantial improvements of buildings in A and AE Zones that include fully enclosed areas formed by foundation and other exterior walls below the base flood elevation, excluding basements, shall be designed to preclude finished living space and designed to allow for the automatic entry and exit of flood waters to equalize hydrostatic flood forces on exterior walls.

- a. Designs for complying with this requirement must either be certified by a professional engineer or architect or meet the following minimum criteria:
 - 1) Provide a minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding;
 - 2) The bottom of all openings shall be not higher than one foot above the slab elevation and set at or above the exterior ground elevation so as to permit free drainage away from the structure;
 - 3) Openings may be equipped with screens, louvers, valves or other coverings or devices provided they permit the automatic flow of floodwaters in both directions. Other coverings must be designed and certified by an engineer and approved by the Portland Town Engineer.
 - b. Electrical, plumbing, HVAC (including duct work) and other utilities, including fuel oil tanks, are prohibited below the base flood elevation; and
 - c. Use of the enclosed area shall be the minimum necessary to allow for parking of vehicles or limited storage of maintenance equipment used in connection with the premises or entry to the living area via a stairway or elevator.
4. Manufactured (Mobile) Homes and Recreational Vehicles
- a. Manufactured (Mobile) Homes are prohibited in all Special Flood Hazard Areas (SFHAs). This includes SFHAs in a manufactured home park or subdivision, in a new manufactured home park or subdivision, in an expansion to an existing manufactured home park or subdivision, or on a site in an existing park which a manufactured home has incurred substantial damage as a result of a flood.
 - b. Recreational Vehicles are prohibited in all Special Flood Hazard Areas (SFHAs).

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5. Floodways

Located within special flood hazard areas established in Section 7.4.3.B are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of flood waters which carry debris and potential projectiles and have erosion potential, no encroachments, including fill, new construction, substantial improvements and other developments shall be permitted unless certification, along with supporting technical data provided by a registered professional engineer is submitted demonstrating that encroachments shall not result in any (0.00 feet) increase in flood levels during occurrence of the base flood discharge. Fences located in the floodway must be aligned with the flow and be of an open design.

- a. A permit may be given which allows encroachments resulting in increases in base flood elevations provided the community first obtains a conditional floodway revision by meeting the requirement of C.F.R. 44, Chapter 1, Subsection 65.12.

6. Critical Facilities: New construction of critical facilities shall be elevated or dry floodproofed to two feet above the base flood elevation (100-year flood elevation).

7.4.7 Standards for Subdivision Proposals:

In all special flood hazard areas the following requirements shall apply:

- A. All subdivision proposals shall be consistent with the need to minimize flood damage;
- B. All subdivision proposals that have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize flood damage;
- C. All subdivision proposals shall provide adequate drainage to reduce exposure to flood hazards;
- D. All subdivision proposals shall provide the boundary of the SFHA, the floodway boundary, and the base flood elevation; and
- E. Base flood elevation data shall be provided for all subdivision proposals and other proposed development, including manufactured home parks and subdivisions, which are five acres or fifty lots, whichever ever occurs first, and are located in Zone A.

7.4.8 Variance Procedures

The Town of Portland Zoning Board of Appeals shall hear and decide appeals and requests for variances from the requirements of these regulations.

- A. The Zoning Board of Appeals shall hear and decide appeals when it is alleged there is an error in any requirement, decision or determination made by the Zoning Enforcement Officer under the direction of the Town Engineer in the enforcement or administration of this Regulation.
- B. Any person aggrieved by the decision of the Zoning Board of Appeals or any person owning land which abuts or is within a radius of one hundred feet (100) of the land in question may appeal within 15 days after such decision to the State Superior Court of the Middletown Judicial District as provided in Section 8-8 of the General Statutes of Connecticut.
- C. A variance issued under these regulations shall become effective as such time as is fixed by the Zoning Board of Appeals, provided a copy thereof shall be filed in the Office of the Portland Town

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Clerk and in the land records of the Town of Portland in the same manner as required for filing of variances from zoning regulations.

D. Specific Situation Variances

1. Buildings on an Historic Register

Variances may be issued for the reconstruction, rehabilitation or restoration of structures listed on the National Register of Historic Places or the State Inventory of Historic Places without regard to the procedures set forth in the remainder of this section, and provided the proposed reconstruction, rehabilitation, or restoration will not result in the structure losing its historical designation.

2. Functionally-Dependent Uses

Variances may be issued for new construction and substantial improvement and other development necessary for the conduct of a functionally dependent permitted use provided the structure or other development is protected by methods that minimize flood damage, creates no additional threat to safety and meets the requirements of Sections 7.4.8.F.1 – 7.4.8.F.4.

3. Floodway Prohibition

Variances shall not be issued within a designated floodway if any increase in flood levels during the base flood discharge would result.

E. Considerations for Granting of Variances

In passing upon such applications for variance, the Zoning Board of Appeals shall consider all technical evaluations, all relevant factors, all standards specified in other sections of these regulations and the items listed below as 7.4.8.E.1 - 7.4.8.E.11. Upon consideration of these factors and the purposes of this Regulation, the Zoning Board of Appeals may attach such conditions to the granting of variances as it deems necessary to further the purposes of this Regulation.

1. The danger that materials may be swept onto other lands to the injury of others;
2. The danger to life and property due to flooding or other erosion damage;
3. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
4. The importance of the services provided by the proposed facility to the community;
5. The necessity of the facility to waterfront location, in the case of a functionally dependent facility;
6. The availability of alternative locations which are not subject to flooding or erosion damage for the proposed use;
7. The compatibility of the proposed use with existing and anticipated development;
8. The relationship of the proposed use to the comprehensive plan of development and the floodplain management program for that area;
9. The safety of access to the property in times of flood for ordinary and emergency vehicles;
10. The expected heights, velocity, duration, rate of rise and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site; and

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11. The costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, and streets and bridges.

F. Criteria for Variances

1. Variances shall only be used upon a determination that the variance is the minimum necessary to afford relief considering the flood hazard; and in the instance of a historical building, a determination that the variance is the minimum necessary as not to destroy the historic character and design of the building and result in the loss of historic designation of the building. Variances pertain to a piece of property and are not personal in nature. A properly issued variance is granted for a parcel of property with physical characteristics so unusual that complying with the regulation would create an exceptional hardship to the applicant or the surrounding property owners. Those characteristics must be unique to that property and not be shared by adjacent parcels. For example, economic or financial hardship is not sufficient cause for a variance, nor are inconvenience, aesthetic considerations, physical handicaps, personal preferences or disapproval of one's neighbors. Use variances are specifically prohibited.
2. Variances shall only be used upon (i) a showing of good and sufficient cause, (ii) a determination that failure to grant the variance would result in exceptional hardship, and; (iii) a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisance, damage the rights or property values of other persons in the area, cause fraud on or victimization of the public, or conflict with existing local laws, regulations or regulations. Only hardships that are based on unusual or unique physical characteristics of the property in question, characteristics that are not shared by adjacent parcels, shall qualify to meet subsection (ii) above. Claims of hardship based on the structure, on economic gain or loss, or on personal or self-created circumstances are not sufficient cause for the granting of a variance.
3. Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with the lowest floor elevation below the base flood elevation (BFE) and the elevation, and that the cost of flood insurance will be commensurate with the increased risk resulting from the lowest floor elevation.
4. The Town Engineer shall maintain the records of all appeal actions and report any variances to the Federal Emergency Management Agency upon request.

7.4.9 Enforcement

- A. Each Zoning Permit issued shall authorize, as a condition of approval, the Town Engineer and/or Zoning Enforcement Officer to make regular inspections of the subject property. The Town Engineer, Zoning Enforcement Officer or designated agents are also authorized to inspect any property in a Special Flood Hazard Area (SFHA) where it appears that violations of these regulations may be taking place.
- B. Should the Town Engineer or Zoning Enforcement Officer find that any person is undertaking any construction, substantial improvement, filling, or any other activity or maintaining a condition which in violation of these regulations, the Zoning Enforcement Officer shall initiate an enforcement pursuant to Zoning Regulation Section 11.3.2 and Section 8.3 of the Connecticut General Statutes. The Zoning Enforcement Officer shall also notify the Building Official and request that any building permit(s) in force be revoked or suspended and that a stop work order be issued.
- C. At the recommendation of the Town Engineer, the Zoning Enforcement Officer may suspend or revoke a Floodplain Development Permit (Zoning Permit) if it is found that the applicant has not

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complied with the terms, conditions or limitations set forth in the permit or has exceeded the scope of work as set forth in the application including application plans. Prior to revoking any permit, the Zoning Enforcement Officer shall issue notice to the permittee, personally or by certified mail, return receipt requested, setting forth the facts or conduct which warrants the intended action.

7.4.10 Penalties for Violation

- A. In accordance with Zoning Regulation Section 11.3.2.B, any person violating any of the provisions of these Regulations shall be subject to the fines, injunctive procedures, and any other penalties prescribed by CGS Chapter 124, as amended, including, when warranted, a separate violation for each day that a violation exists.

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