

TOWN of RIPTON

Fluvial Erosion Hazard Zoning Bylaw

Approved by Ripton Selectboard
14 September 2009

TOWN OF RIPTON FLUVIAL EROSION HAZARD ZONING BYLAW

I. TITLE

The title of this Bylaw shall be “Town of Ripton Fluvial Erosion Hazard Zoning Bylaw”.

II. STATUTORY AUTHORIZATION AND EFFECT

In accordance with 24 V.S.A. §§4424, 4410, 4411 and §4414, there is hereby established a Zoning Bylaw for areas at risk of fluvial erosion hazards and damage in the Town of Ripton, Vermont.

III. STATEMENT OF PURPOSE

It is the purpose of this Bylaw to:

- A. Implement related goals, policies, objectives, and recommendations of the current municipal plan, any hazard mitigation plans, and any supporting river corridor management plans.
- B. Avoid and minimize the 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-related erosion.
- C. Protect mapped fluvial erosion hazard areas that are highly subject to erosion due to naturally occurring stream channel migration and adjustment.
- D. Limit new development within fluvial erosion hazard areas to protect public safety and to minimize property loss and damage due to fluvial erosion.
- E. Allow rivers and streams to maintain or re-establish a natural equilibrium, thereby avoid the need for costly and environmentally degrading stream channelization and bank stabilization measures.

IV. APPLICABILITY

- A. After the effective date of this Bylaw it shall be unlawful to undertake development within areas depicted on the most current Fluvial Erosion Hazard (FEH) maps (“Fluvial Erosion Hazard Area”) without a permit specifically approving the development in accordance with the provisions of this Bylaw.
- B. Current FEH maps, prepared for the Town of Ripton in accordance with state-accepted stream geomorphic assessment and mapping protocols, are hereby adopted by reference and declared to be part of this Bylaw. In addition, FEH maps prepared subsequent to the effective date of this Bylaw shall also become incorporated by reference and declared to be part of this Bylaw upon approval by

the Ripton Selectboard after notice and hearing. Once adopted, either with the passage of this Bylaw or by later action of the Selectboard, applicable FEH maps shall be filed in the office of the Town Clerk.

- C. If uncertainty exists with respect to the location of a boundary of the Fluvial Erosion Hazard Area, the Zoning Administrator shall determine the actual location, in consultation with the River Management Program (RMP) of the Vermont Agency of Natural Resources, or any successor Agency. The provisions of this Bylaw shall not apply if the RMP determines the proposed development is not located within the Fluvial Erosion Hazard Area due to an error in delineating the FEH boundary. A letter of determination from the RMP to this effect shall constitute proof of such an adjustment to the boundary of the Fluvial Erosion Hazard Area.
- D. The provisions and restrictions of this Bylaw shall be superimposed over, and additional to, those imposed by any other zoning district or districts enacted within the Town of Ripton by operation of its other Zoning Bylaw or Bylaws. Where there is a conflict between the provisions of any such underlying zoning districts and those imposed by this Bylaw, the more restrictive shall apply.
- E. The provisions of this Bylaw shall not in any way impair or remove any requirement to comply with any and all other applicable local, state, or federal laws or regulations. Where this Bylaw imposes a greater restriction than other applicable laws or regulations, the provisions of this Bylaw shall take precedence.

V. DEFINITIONS

For the purposes of this Bylaw, the following definitions shall apply:

Accessory Structure: A structure which is: 1) detached from and clearly incidental and subordinate to the principal use of or structure on a lot, 2) located on the same lot 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, playhouses, and in-ground swimming pools which are incidental to the residential use of the premises and not operated for gain.

Channel: The area that contains continuously or periodic flowing water that is confined by banks and a streambed.

Channel (Bankfull) Width: The width of a stream channel when flowing at a bankfull discharge – the water stage that first overtops the natural banks. This flow occurs, on average, about once every one to two years.

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

Fill: Any placed material that changes the natural grade, increases elevation, or diminishes the flood storage capacity at the site.

Fluvial Erosion Hazard Area: Stream channels and the area adjacent to stream channels subject to fluvial erosion processes or other channel adjustments as delineated on the current Fluvial Erosion Hazard Area Map(s) for the municipality.

Improvement: Any repairs, reconstruction, enhancements, or additions to a structure. For the purpose of administering flood hazard area regulations, this definition excludes the improvement of a structure to comply with existing municipal or state health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions.

Top of Bank: The vertical point along a stream bank where an abrupt change in slope is evident. For streams in wider valleys it is the point where the stream is generally able to overflow the banks and enter the floodplain. For steep and narrow valleys, it will generally be the same as the top of slope.

VI. PERMITTED USES

The following uses and activities, if so allowed under other applicable local, state and federal laws and regulations, are hereby permitted within the Fluvial Erosion Hazard Area:

- A. Improvements to an existing structure that cumulatively do not increase the structural footprint by more than 500 square feet, and do not decrease the structure's existing setback distance from the stream channel, as measured horizontally from the nearest point of the structure to the top of bank; and
- B. Accessory structures to an existing principal structure that:
 - (1) In total have a combined footprint area of no more than 500 square feet.
 - (2) At a minimum, do not decrease the setback distance from the stream channel established by existing structures on the lot.
 - (3) Are located within 50 feet of the existing primary building; and
- C. Recreational vehicles, provided they shall be on the site for fewer than 180 consecutive days and be fully licensed and lawful for highway use.

VII. CONDITIONAL USES

The following uses and activities, if so allowed under other applicable local, state and federal laws and regulations, are hereby allowed within the Fluvial Erosion Hazard Area, provided they receive conditional use review and approval by the Board of Adjustment:

- A. Fill, only to elevate existing structures above base flood elevation as required within Special Flood Hazard Areas or as otherwise authorized by the State.
- B. Infrastructure and utility improvements necessary to serve existing structures and uses that do not decrease the structure's existing setback distance from the stream channel, as measured horizontally from the nearest point of the structure to the top of bank.
- C. At-grade parking for existing structures and uses.
- D. New or replacement storage tanks for existing structures.
- E. Grading and excavation.
- F. Stream crossings and stream channel management activities, as authorized by the State.
- G. Improvements to existing driveways, roads, bridges and culverts.
- H. Replacement of failed infrastructure element with one of same size.
- I. Public facilities which are functionally dependent upon their proximity to water.
- J. New driveways and access roads.
- K. Improvements to existing flood and stormwater management facilities, as authorized by the State.
- L. Outdoor recreation facilities, excluding structures.

VIII. PROHIBITED USES

The following uses and activities are specifically prohibited within the Fluvial Erosion Hazard Area:

- A. All new development, including new structures, dwellings, septic systems, and other infrastructure and utilities, except as specified under Articles (VI), (VII), and (IX).
- B. Junk or salvage yards.
- C. The storage of floatable materials, chemicals, fertilizers, pesticides, explosives, flammable liquids, and other toxic or hazardous materials.
- D. Fill, except as necessary to elevate existing structures above base flood elevation.

- E. Any use not specifically referenced in this Bylaw as either a Permitted or a Conditional Use, or as an Exempt Activity.

IX. EXEMPT ACTIVITIES

The following uses and activities are exempt from the requirements of this Bylaw, although, however, they remain subject to the provisions of any other applicable law or regulation:

- A. The removal of a structure or building in whole or in part.
- B. Normal maintenance and repair of existing utilities and infrastructure (e.g., water and wastewater systems, driveways, roads, bridges and culverts, and stormwater drainage systems), except where failure of infrastructure suggests upgrading of the failed infrastructure element.
- C. Normal maintenance and repair of existing structures that involve no additions, expansions or relocations.
- D. Lawns and gardens located outside of any required riparian buffer area, excluding grading, fill, terracing and structures.
- E. Forestry (silviculture) activities, excluding structures, conducted in accordance with Vermont Department of Forests, Parks and Recreation Accepted Management Practices (AMPs).
- F. Agricultural activities conducted in accordance with Vermont Agency of Agriculture, Food, and Markets Accepted Agricultural Practices (AAPs); however, no new or expanded farm structures, or manure, fertilizer or pesticide storage structures shall be constructed within the areas subject to the provisions of this Bylaw, in accordance with Section 4.07 the AAPs. Prior to the construction of any farm structure, written notification, including a sketch of the proposed structure and any required setbacks, must be filed with the municipality.
- G. Power generation, transmission and telecommunications facilities regulated by the Vermont Public Service Board under 30 V.S.A. §248.

X. DEVELOPMENT STANDARDS

All development within the Fluvial Erosion Hazard Area, unless specifically exempt from regulation under Article IX above, shall meet the following standards, as applicable to the proposed use or activity, in addition to any other standards imposed by the Zoning Administrator, the Zoning Board of Adjustment and the RMP, as applicable, or by the requirements imposed by other laws and regulations:

- A. Improvements to existing structures shall not decrease the distance between the structure and the stream channel as measured horizontally from the top of bank.
- B. Fill is allowed within this district only as required to elevate existing structures above base flood elevation, or as otherwise authorized by the State in association with stream crossings, channel management activities, or other allowed activities. Fill shall not decrease the existing distance between the structure and the top of bank.
- C. New stream crossings by transportation and utility corridors shall be allowed only if it is determined by the Board of Adjustment that a new crossing is justified for routing, public or emergency vehicle access, and that there are no other viable routes or locations for a crossing either (i) outside the Fluvial Erosion Hazard Area or (ii) within an existing utility or road crossing. Stream crossings shall be located and designed in accordance with state guidelines, and to minimize fluvial erosion and flooding hazards both up and downstream from the crossing area.
- D. Bridges and culverts shall be located, designed, sized, and regularly inspected and maintained to minimize erosion as well as flooding hazards.
- E. All utility lines, including water, sewer, power, telephone, and cable lines, shall be buried.

XI. ADMINISTRATION

- A. **Zoning Administrator and Board of Adjustment.** This Bylaw shall be administered, implemented and enforced by a Zoning Administrator and a Zoning Board of Adjustment to be appointed as provided, and to carry out those duties specified, in 24 V.S.A. Chapter 117 and this Bylaw.
- B. **Variances.** The Zoning Board of Adjustment may grant variances only after following those procedures provided for, and upon satisfaction of those criteria governing the administration of variance applications set forth, in 24 V.S.A. Chapter 117, this Bylaw and other applicable Town of Ripton Zoning Bylaws.
- C. **Conditional Uses.** The Zoning Board of Adjustment may grant conditional use approval only after following those procedures provided for, and upon satisfaction of those criteria governing the administration of conditional use applications set forth, in 24 V.S.A. Chapter 117, this Bylaw and other applicable Town of Ripton Zoning Bylaws.

In particular, in order to grant conditional use approval, the Zoning Board of Adjustment must find, in consultation with the RMP, that conditional uses within the Fluvial Erosion Hazard Area shall not:

- (1) Have an undue adverse effect on public services and facilities, including

roads, bridges, culverts, and emergency services, during and after fluvial erosion events.

(2) Increase the susceptibility of the property or other properties to fluvial erosion damage.

(3) Increase the potential for materials to be swept into the stream channel or onto other land and cause damage from fluvial erosion.

D. **Certificates Of Occupancy.** It shall be unlawful to use or occupy, or permit the use or occupancy of any land, land use or structure, or part thereof, created, erected, changed, converted, or wholly or partly altered or enlarged in its use or structure within the Fluvial Erosion Hazard Area until a certificate of occupancy is issued therefor by the Zoning Administrator, stating that the proposed use of the structure or land conforms to the requirements of this Bylaw and that all other applicable municipal and state permits for the development have been obtained and satisfied. A certificate of occupancy is not required for the use or occupancy of a land use or structure that was in existence and in compliance with all applicable laws and regulations as of the effective date of this Bylaw unless it is altered subsequent to this effective date.

E. **Fees.** The Selectboard shall set fees for permit, variance, conditional use, certificate of occupancy and any other review and approval process provided for by this Bylaw. No application shall be considered complete until payment of the applicable fee is tendered in full.

XII. APPLICATION REQUIREMENTS

In addition to application materials and fees required by the administration of other laws and regulations, applications for development within the Fluvial Erosion Hazard Area shall include the following:

- A. A project description, including the type and purpose of development, a description of alternatives considered to proposed development, including alternate locations on site, especially outside of the Fluvial Erosion Hazard Area and why it must be located within, rather than outside of, the Fluvial Erosion Hazard Area.
- B. A general location map showing the location of the proposed development in relation to existing development, the Fluvial Erosion Hazard Area boundaries, and the nearest public road.
- C. A site plan of the property, drawn to scale, that shows all water bodies, abutter names and addresses, Fluvial Erosion Hazard Area boundaries; pre- and post-development grades and drainage; the location of existing structures, infrastructure, utilities and rights-of-way; and the shortest horizontal distance of

the proposed development to the center line (or measured to the top of the nearest bank if not possible to measure to the center line) of any of the mapped stream channels.

- D. A state project review sheet that identifies required state permits and approvals.
- E. Identification of the horizontal distance from the centerline of the nearest public road to the center line (or top of nearest bank if not possible to measure to the center line) of any stream.
- F. Other information as deemed necessary to determine project conformance with Bylaw requirements. This may include an impact or other assessment of the site, prepared by a qualified professional at the applicant's expense.
- G. The appropriate fee as determined by the Selectboard.

XIII. PROCESS

- A. The Zoning Administrator shall promptly refer complete applications for all development proposed within the Fluvial Erosion Hazard Area to the RMP. The Zoning Administrator shall not issue a permit or approval or otherwise act on such an application until s/he receives comments from RMP, or 30 days have elapsed from the date of referral, whichever is sooner.
- B. The Zoning Administrator shall incorporate any timely received RMP comments on a pending application into his/her decision, either under associated conditions of approval or reasons for denial.
- C. The Zoning Administrator may suspend his/her consideration of a permit application and/or the Zoning Board of Adjustment may recess its proceedings on any application, to request additional information concerning a pending permit application, until such time as information sufficient to satisfy the request is received.

XIV. ENFORCEMENT AND PENALTIES

- A. Pursuant to 24 V.S.A. § 1974a, any person who violates a provision of this civil ordinance shall be subject to civil penalty of up to \$500.00 per day for each day that such violation continues. Each day that a violation continues shall constitute a separate offense under this Ordinance. The Zoning Administrator, or designee, of the Town of Ripton shall be authorized to act as Issuing Municipal Official to issue and pursue before Judicial Bureau a municipal complaint ("municipal ticket").
 - (1) Civil Penalties – An Issuing Municipal Official is authorized to recover civil penalties in the following amounts for each violation:

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| First offense | \$100.00 |
| Second offense | \$200.00 |
| Third offense | \$400.00 |
| Fourth offense and higher | \$500.00 |

- (2) Waiver Fee – an Issuing Municipal Official is authorized to recover a waiver fee, in lieu of a civil penalty in the following amount, for any person who declines to contest a municipal complaint and pay the waiver fee:

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|---------------------------|----------|
| First offense | \$ 50.00 |
| Second offense | \$100.00 |
| Third offense | \$200.00 |
| Fourth offense and higher | \$250.00 |

- B. In addition to the enforcement procedures available before the Judicial Bureau, the Zoning Administrator is authorized to commence a civil action before the Environmental Court for any purpose authorized by 24 V.S.A. § 1974a or § 4452 including without limitation, where the penalty for all continuing civil ordinance violations is greater than \$500.00 and/or to seek injunctive relief.

XV. WARNING AND DISCLAIMER OF LIABILITY

The delineation of the Fluvial Erosion Hazard Area and enactment of this Bylaw does not imply that land outside of the Fluvial Erosion Hazard Area is free of fluvial erosion hazards or that development conducted in accordance with the provisions of this Bylaw will withstand fluvial erosion hazards. This Bylaw shall not create liability on the part of the Town of Ripton, or any municipal official or employee thereof, for any flood or erosion damages that result from reliance on this Bylaw, or any administrative decision made hereunder.