

## **An Ordinance to Amend Chapter 116 (Floodplain Management) of the Code of the Town of Wells**

**NOTE:** Proposed additions to existing Code sections are underlined.  
Proposed deletions of existing Code sections are ~~crossed-out~~.  
Other sections of the Ordinance are unchanged.

**The Town of Wells hereby ordains and enacts “An Ordinance to Amend Chapter 116 (Floodplain Management) of the Code of the Town of Wells” to read as follows:**

### **Part 1: Chapter 116 (Floodplain Management)**

#### **§ 116-5. Review standards for flood hazard development permit applications.**

The Code Enforcement Officer shall:

A. Review all applications for the flood hazard development permit to assure that proposed developments are reasonably safe from flooding and to determine that all pertinent requirements of § 116-6, Development standards, have been, or will be met;

F. If the application satisfies the requirements of this chapter, approve the issuance of one of the following flood hazard development permits, based on the type of development:

(3) A flood hazard development permit for minor development for all development that is not maintenance and repairs per § 116-7, not new construction or a substantial improvement, such as ~~repairs, maintenance~~, renovations, or additions, whose value is less than 50% of the market value of the structure. Minor development also includes, but is not limited to accessory structures as provided for in § 116-6.L, mining, dredging, filling, grading, paving, excavation, drilling operations, storage of equipment or materials, deposition or extraction of materials, public or private sewage disposal systems or water supply facilities that do not involve structures; and nonstructural projects such as bridges, dams, towers, fencing, pipelines, wharves, and piers.

#### **§ 116-7. ~~(Reserved)~~ Exemptions For Maintenance And Repairs.**

The purpose of this section is to clarify what constitutes maintenance for purposes of flood plain regulation, to exempt routine, non-flood-related maintenance from Flood Hazard Development Permit requirements, and to ensure that repairs necessitated by flood damage remain fully regulated in accordance with state and federal floodplain management standards.

A. This section is intended to:

1. Preserve public safety and flood protection;
2. Maintain compliance with the National Flood Insurance Program (NFIP);
3. Avoid unnecessary permitting of routine upkeep; and
4. Provide clear, enforceable standards for property owners and Code Enforcement Officials.

B. Maintenance Exempt from Flood Hazard Development Permit

Maintenance as defined in § 116-14, shall be exempt from the requirement to obtain a Flood Hazard Development Permit, provided that all of the following conditions are met:

1. The work is not required as a result of flood damage;
2. The work does not constitute new construction, development, or a Substantial Improvement as defined by this ordinance;
3. The work does not obstruct flood flows, reduce flood storage capacity, or alter natural floodplain features;
4. The work does not enclose, convert, or finish any area below the Base Flood Elevation, including basements, crawlspaces, or enclosed areas below the lowest floor; and
5. The work does not otherwise trigger floodplain compliance requirements under this ordinance.

### C. Maintenance Affidavit

For the limited purpose of documenting that proposed work qualifies as Maintenance exempt from Flood Hazard Development Permit requirements under this ordinance, the Code Enforcement Officer may require that the property owner or authorized agent submit a signed Maintenance Affidavit prior to commencement of work.

Submission of a Maintenance Affidavit is not a permit application, does not require approval, and shall not be subject to a fee.

1. Affidavit Content: When provided or required, the Maintenance Affidavit shall be on a form approved by the Code Enforcement Office and shall include, at a minimum:

- a. The property address, map and lot number, and owner or authorized agent information;
  - b. A brief but sufficient description of the proposed work, including materials ;
  - c. A signed statement affirming that the work:
    - i. Is not required as a result of flood damage;
    - ii. Does not constitute new construction, development, or a Substantial Improvement;
    - iii. Does not enclose, convert, or finish any area below the Base Flood Elevation;
    - iv. Does not obstruct flood flows, reduce flood storage capacity, or alter natural floodplain features; and
    - v. Does not otherwise trigger floodplain permitting or compliance requirements under this ordinance;
  - d. Photographs of existing conditions sufficient to document the scope and nature of the work;
1. The Maintenance Affidavit is an **administrative documentation tool only**. Its submission shall not:
    - a. Create a permitting requirement where none otherwise exists;
    - b. Be construed as an approval, authorization, or development permit; or
    - c. Require payment of a fee.
  2. Additional Review Authority

Submission of a Maintenance Affidavit shall not limit the authority of the Code Enforcement Officer to require additional information, conduct inspections, or require permits where otherwise required by federal. State or local ordinances or law.

### 3. Determination of Ineligibility

If the Code Enforcement Officer determines that the proposed or completed work does not qualify as Maintenance, the exemption shall be void, and the work shall be subject to all applicable floodplain permitting, compliance, and enforcement requirements.

## D. Exterior Maintenance Activities Exempt from Flood Hazard Development Permit

When meeting the definition of Maintenance, the following exterior maintenance activities shall be exempt from the requirement to obtain a Flood Hazard Development Permit:

1. Roofing and Weather Protection
  - a. Replacement or repair of roof coverings in kind, including shingles, underlayment, flashing, ridge caps, vents, and drip edges, where no change is made to roof height, pitch, footprint, or structural framing;
  - b. Repair or replacement of chimney caps, counterflashing, and step flashing;
  - c. Sealing, caulking, or weatherproofing of roof penetrations.
2. Siding, Trim, and Exterior Finishes
  - a. Replacement or repair of exterior siding, shingles, clapboards, or panels in-kind;
  - b. Repair or replacement of exterior trim, soffits, fascias, corner boards, and rake boards;
  - c. Painting, staining, sealing, or refinishing of exterior surfaces.
3. Windows, Doors, and Openings
  - a. Replacement of windows and exterior doors within existing openings, including storm windows and storm doors;
  - b. Repair or replacement of exterior door hardware, thresholds, and weatherstripping;
  - c. Replacement of screens and screen framing.
4. Decks, Stairs, Porches, and Railings
  - a. Replacement of deck boards, stair treads, handrails, guardrails, and balusters, provided no change is made to the size, height, configuration, or location of the deck, porch, stairs, or landings;
  - b. Repair or replacement of porch flooring in-kind;
  - c. Replacement of fasteners or connectors as part of routine maintenance.
5. Foundations and Exterior Structural Protection
  - a. Minor patching or repair of concrete, masonry, or foundation surfaces to address cracking, spalling, or deterioration, provided the original structural design and load paths remain unchanged;
  - b. Repointing of masonry foundations or chimneys;
  - c. Repair or replacement of bulkhead doors in-kind.
6. Gutters, Downspouts, and Drainage Appurtenances
  - a. Repair or replacement of gutters and downspouts in-kind;
  - b. Installation of gutter guards or leaf screens;
  - c. Minor grading or surface drainage improvements that do not alter flood flows, flood storage capacity, or natural floodplain features.
7. Exterior Work Not Considered Maintenance

The following exterior activities shall not be considered Maintenance and shall require a Flood Hazard Development Permit where applicable:

- a. Expansion or enlargement of decks, porches, stairs, or landings;

- b. Enclosure of porches, decks, or areas below the Base Flood Elevation;
- c. Construction of new rooflines, dormers, or structural roof modifications;
- d. Installation of new exterior walls or new exterior openings;
- e. Relocation of structures or structural components;
- f. Any exterior work required as a result of flood damage;
- g. Any work that contributes toward or meets the definition of Substantial Improvement.

#### E. Flood-Related Repairs Not Exempt

Notwithstanding any maintenance exemption established by this ordinance:

1. Any repair, replacement, or restoration work required as a result of flood damage shall require a Flood Hazard Development Permit;
2. Flood-related damage includes damage or deterioration caused directly or indirectly by flooding, floodwaters, wave action, hydrostatic pressure, hydrodynamic forces, erosion, scour, or debris impact associated with a flood event;
3. Flood-related repairs shall be subject to Substantial Improvement determinations, cumulative cost tracking, and all applicable floodplain construction standards.

The Code Enforcement Officer shall determine whether damage is flood-related based on available evidence, including site inspections, flood event data, insurance documentation, inspection reports, or applicant representations.

#### F. Relationship to Building and Trade Permits

1. This ordinance governs Flood Hazard Development Permits only. Nothing herein shall be construed to exempt work from applicable building, electrical, plumbing, mechanical, fire, zoning, or land-use permit requirements.
2. Normal maintenance activities may be exempt from building permits where permitted by applicable codes and where no structural alteration or regulated trade work is proposed; however, no building-code exemption shall exempt flood-related repairs from compliance with this ordinance.
3. Where work qualifies as Maintenance under the building code but is required due to flood damage, a Flood Hazard Development Permit shall be required prior to commencement of work.

### § 116-14. Word usage; definitions.

A. Unless specifically defined below, words and phrases used in this chapter shall have the same meanings as they have at common law and to give this chapter its most reasonable application. Words used in the present tense include the future, the singular number includes the plural, and the plural number includes the singular. The word "may" is permissive; "shall" is mandatory and not discretionary.

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

## **HEIGHT**

Height, as referenced in the definition of Maintenance, relating to decks, porches, stairs, landings, and similar exterior appurtenances, means the vertical elevation of the deck, porch, stair, or landing walking surface or its supporting structural elements relative to:

- existing grade;
- the previously approved structure elevation; and
- where applicable, the Base Flood Elevation (BFE).

Height does not include railing, guard, or handrail height.

## **MAINTENANCE**

Maintenance means routine upkeep, repair, or in-kind replacement of existing components of a lawfully constructed building or structure, performed for the purpose of preserving the original condition, safety, and functionality of the structure, and which does not:

- Increase the footprint, height, volume, or floor area of the structure;
- Alter the location of the structure on the lot;
- Modify, reconfigure, or replace load-bearing walls, columns, beams, foundations, or other structural elements, except for isolated in-kind repairs that do not alter the original structural design or load path;
- Create new exterior wall openings or enlarge existing openings;
- Change the use or occupancy classification of the structure; or
- Constitute reconstruction, rehabilitation, enlargement, relocation, elevation, or improvement.

Maintenance includes, but is not limited to, the following in-kind interior work:

- a. Replacement of kitchen or bathroom countertops, backsplashes, or surface finishes, where no change is made to cabinet layout, plumbing fixture locations, appliance locations, electrical service, structural framing, or wall configuration;
- b. Replacement of countertops with materials of similar thickness and loading that do not require structural reinforcement or alteration of supporting cabinets or framing;
- c. Repair or replacement of countertop surfaces, edge profiles, and finishes, including laminate, solid surface, stone, wood, or composite materials.

Maintenance does not include removal or replacement of countertops where such work is part of a larger kitchen or bathroom renovation, remodeling, or reconfiguration involving relocation of plumbing, gas, electrical, cabinetry, walls, or structural elements.

Maintenance does not include repairs, replacement, or restoration work necessitated by flood damage, which shall be regulated in accordance with this ordinance.

Maintenance shall not be considered Substantial Improvement and shall not be included in the calculation of cumulative improvement costs, unless the scope, nature, or cumulative effect of such work constitutes reconstruction, rehabilitation, addition, or other improvement as defined under Substantial Improvement.

## MARKET VALUE

The value a structure would bring on the open market. The following apply:

- a. The value shall be based on the condition of the structure before the first improvement is undertaken within a 5 year period or before damage has occurred;
- b. Value not to be included is the land, landscaping, hard scaping (driveways, ground level patios, fences, ect.), accessory structures such as sheds, gazebos, pools/spas, docks, generators, seawalls shall be evaluated as separate structures with independent market values;
- c. Evidence of value shall be the replacement cost stated on a certified insurance appraisal or an appraisal performed by a Maine licensed real estate appraiser based on the structure before the improvement is undertaken or before damage has occurred;
- d. The evidence of value shall not include any depreciation adjustments;
- e. Value of the use and occupancy (business income) shall not be included.

## **MINOR DEVELOPMENT**

All development that is not Maintenance and Repairs per § 116-7, not new construction or a substantial improvement, such as ~~repairs, maintenance~~, renovations, or additions, whose value is less than 50% of the market value of the structure. It also includes, but is not limited to: accessory structures as provided for in § **116-6 L**, mining, dredging, filling, grading, paving, excavation, drilling operations, storage of equipment or materials, deposition or extraction of materials, public or private sewage disposal systems or water supply facilities that do not involve structures; and nonstructural projects such as bridges, dams, towers, fencing, pipelines, wharves, and piers.

## **SUBSTANTIAL IMPROVEMENT**

Effective July 17, 2024, any singular or successive ~~repairs,~~ renovations, reconstructions, rehabilitations, additions, or other improvements of a structure, the cumulative cost (value) of which equals or exceeds 50% of the market value of the structure before the start of construction of the first improvement undertaken over ~~the life of the structure~~ a 5 year period. This term "substantial improvement" includes structures which have incurred substantial damage of any origin, regardless of the actual repair work performed. The term does not, however, include either:

(1) Any project for improvement of a structure to correct existing violations of state or 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;

or

(2) Any alteration of an historic structure, provided that the alteration will not preclude the structure's continued designation as a historic structure, and a variance is obtained from the Zoning Board of Appeals.

(3) Any record of cumulative cost (value) prior to July 17, 2024 shall no longer be applicable.

(4) The cumulative cost shall not include maintenance costs, see § 116-7 and definition of Maintenance.

(5) The cost of improvement shall include all costs associated with the proposed work, including but not limited to materials, labor, overhead, profit, professional services, and built-in equipment, except as expressly excluded under Subsection D and the definition of Maintenance set forth in this ordinance.

(6) Upon expiration of each five (5)-year period, both the cumulative improvement cost total and the market value baseline used for comparison shall reset, and only improvements undertaken and market value established within the most recent five (5)-year period shall be

considered. The Town of Wells hereby adopts a five (5)-year cumulative improvement tracking period for purposes of Substantial Improvement determinations, as a locally administered policy intended to ensure consistent, enforceable application of floodplain management standards in accordance with National Flood Insurance Program (NFIP) requirements.

(7) The cumulative cost shall be for materials and labor. If the cost submitted with a flood permit application is not a reasonable representation of the cost, the Code Enforcement Officer shall use RS Means Data, the National Construction Estimator, or National Building Cost Manual as adjusted for inflation and region to establish the cost of the improvement.

(8) Notwithstanding the cumulative improvement period established herein, nothing in this section shall be construed to limit or modify the Town's obligation to enforce Substantial Improvement and Substantial Damage requirements for flood-related damage in accordance with the National Flood Insurance Program (NFIP).

**Part 2:** Effective Date.

This Ordinance shall take effect upon adoption by the Town Meeting.

Given under our hands this \_\_\_\_ day of \_\_\_\_\_, 2026.

THE SELECT BOARD OF THE TOWN OF WELLS:

\_\_\_\_\_  
John MacLeod III

\_\_\_\_\_  
Avery Seuter

\_\_\_\_\_  
Kathleen Chase

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Timothy Roche

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James N. Smith