

## ZONING ARTICLE

ARTICLE #                    RE:

To see if the Town will vote to amend the Zoning Bylaws Article XIV, Section 8.1 by replacing the section in its entirety. Or take any action relative thereto.

### SECTION 8.1.0 100-YEAR FLOODPLAIN DISTRICT

#### 8.1.1 Purpose

The purpose of the Floodplain Overlay District is to:

- 1) Ensure public safety through reducing the threats to life and personal injury
- 2) Eliminate new hazards to emergency response officials
- 3) Prevent the occurrence of public emergencies resulting from water quality, contamination, and pollution due to flooding
- 4) Avoid the loss of utility services which if damaged by flooding would disrupt or shut down the utility network and impact regions of the community beyond the site of flooding
- 5) Eliminate costs associated with the response and cleanup of flooding conditions
- 6) Reduce damage to public and private property resulting from flooding waters
- 7). Preserve the natural flood control characteristics and the flood storage capacity of the floodplain.

The floodplain management requirements found in this Floodplain Overlay District section shall take precedence over any less restrictive conflicting local laws or regulations.

The degree of flood protection required by this bylaw is considered reasonable but does not imply total flood protection.

If any section, provision or portion of this bylaw is deemed to be unconstitutional or invalid by a court, the remainder of the bylaw shall be effective.

#### 8.1.2 District Boundaries

The Floodplain District is herein established as an overlay district. The District includes all special flood hazard areas within Burlington designated as Zone A and AE on the Middlesex County Flood Insurance Rate Maps (FIRM) issued by the Federal Emergency Management Agency (FEMA) for the administration of the National Flood Insurance Program. The exact boundaries of the District shall be defined by the 1%-chance base flood elevations shown on the FIRM and further defined by the Middlesex County Flood Insurance Study (FIS) report dated July 6, 2016. The FIRM and FIS report are incorporated herein by reference and are on file with the Town Clerk, Planning Board, Building Official, and Conservation Commission.

#### 8.1.3 Definitions

BASE FLOOD ELEVATION defined in Article II

DEVELOPMENT means any man-made change to improved or unimproved real estate, including but not limited to building or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials. [US Code of Federal Regulations, Title 44, Part 59]

**FLOODWAY.** The channel of the river, creek 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 a designated height. [Base Code, Chapter 2, Section 202]

**FUNCTIONALLY DEPENDENT USE** means a use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, but does not include long-term storage or related manufacturing facilities. [US Code of Federal Regulations, Title 44, Part 59] Also [Referenced Standard ASCE 24-14]

**HIGHEST ADJACENT GRADE** means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure. [US Code of Federal Regulations, Title 44, Part 59]

**HISTORIC STRUCTURE** means any structure that is:

- (a) Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
  - (b) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
  - (c) 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
  - (d) Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
    - (1) By an approved state program as determined by the Secretary of the Interior or
    - (2) Directly by the Secretary of the Interior in states without approved programs.
- [US Code of Federal Regulations, Title 44, Part 59]

**LOWEST FLOOR** defined in Article II

**MANUFACTURED HOME** defined in Article II

**NEW CONSTRUCTION.** Structures for which the start of construction commenced on or after the effective date of the first floodplain management code, regulation, ordinance, or standard adopted by the authority having jurisdiction, including any subsequent improvements to such structures. New construction includes work determined to be substantial improvement. [Referenced Standard ASCE 24-14]

**RECREATIONAL VEHICLE** means a vehicle which is:

- (a) Built on a single chassis;
  - (b) 400 square feet or less when measured at the largest horizontal projection;
  - (c) Designed to be self-propelled or permanently towable by a light duty truck; and
  - (d) Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.
- [US Code of Federal Regulations, Title 44, Part 59]

**REGULATORY FLOODWAY** - see FLOODWAY.

**RESIDENTIAL** defined in Article II

**SPECIAL FLOOD HAZARD AREA.** The land area subject to flood hazards and shown on a Flood Insurance Rate Map or other flood hazard map as Zone A, AE, A1-30, A99, AR, AO, AH, V, VO, VE or V1-30. [Base Code, Chapter 2, Section 202]

**START OF CONSTRUCTION.** The date of issuance for new construction and substantial improvements to existing structures, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement or

other improvement is within 180 days after the date of issuance. The actual start of construction means the first placement of permanent construction of a building (including a manufactured home) on a site, such as the pouring of a slab or footings, installation of pilings or construction of columns.

Permanent construction does not include land preparation (such as clearing, excavation, grading or filling), the installation of streets or walkways, excavation for a basement, footings, piers or foundations, the erection of temporary forms or the installation of accessory buildings such as garages or sheds not occupied as dwelling units or not part of the main building. 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. [Base Code, Chapter 2, Section 202]

STRUCTURE means, for floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home. [US Code of Federal Regulations, Title 44, Part 59]

SUBSTANTIAL IMPROVEMENTS defined in Article II

SUBSTANTIAL REPAIR OF A FOUNDATION. When work to repair or replace a foundation results in the repair or replacement of a portion of the foundation with a perimeter along the base of the foundation that equals or exceeds 50% of the perimeter of the base of the foundation measured in linear feet, or repair or replacement of 50% of the piles, columns or piers of a pile, column or pier supported foundation, the building official shall determine it to be substantial repair of a foundation. Applications determined by the building official to constitute substantial repair of a foundation shall require all existing portions of the entire building or structure to meet the requirements of 780 CMR. [As amended by MA in 9th Edition BC]

VARIANCE means a grant of relief by a community from the terms of a flood plain management regulation. [US Code of Federal Regulations, Title 44, Part 59]

VIOLATION means the failure of a structure or other development to be fully compliant with the community's flood plain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in §60.3(b)(5), (c)(4), (c)(10), (d)(3), (e)(2), (e)(4), or (e)(5) is presumed to be in violation until such time as that documentation is provided. [US Code of Federal Regulations, Title 44, Part 59]

#### 8.1.4 Permitted Land Uses

The Floodplain District is established as an overlay district to all other districts. The Town of Burlington requires a permit for all proposed construction or other development in the floodplain overlay district, including new construction or changes to existing buildings, placement of manufactured homes, placement of agricultural facilities, fences, sheds, storage facilities or drilling, mining, paving and any other development that might increase flooding or adversely impact flood risks to other properties. The town’s permit review process includes the requirement that the proponent obtain all local, state and federal permits that will be necessary in order to carry out the proposed development in the floodplain overlay district. The proponent must acquire all necessary permits, and must demonstrate that all necessary permits have been acquired.

All development in the district, including structural and non-structural activities, whether permitted by right or by special permit must be in compliance with the following:

1. Wetlands Protection Regulations, Department of Environmental Protection (DEP) (currently 310 CMR 10.00);
2. DEP Inland Wetlands Restrictions (currently 310 CMR 13.00);
3. DEP Minimum Requirements for Subsurface Disposal of Sanitary Sewage (currently 310 CMR 15, Title 5).

#### 8.1.5 Requirements for Development within the Floodway

In Zones A, A1-30, and AE, along watercourses that have not had a regulatory floodway designated, the best available Federal, State, local, or other floodway data shall be used to prohibit encroachments in floodways which would result in any increase in flood levels within the community during the occurrence of the base flood discharge.

In A Zones, in the absence of FEMA BFE data and floodway data, the building department will obtain, review and reasonably utilize base flood elevation and floodway data available from a Federal, State, or other source as criteria for requiring new construction, substantial improvements, or other development in Zone A and as the basis for elevating residential structures to or above base flood level, for floodproofing or elevating nonresidential structures to or above base flood level, and for prohibiting encroachments in floodways.

Within the floodway portion of the Floodplain District, as delineated on the **FIRM** the following requirements apply:

1. In Zones A1-30 and AE, along watercourses that have a regulatory floodway designated on the Town's FIRM encroachments are prohibited, including fill, new construction, substantial improvements, and other development within the adopted regulatory floodway unless it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed encroachment would not result in any increase in flood levels within the community during the occurrence of the base flood discharge. Such certification shall be to the satisfaction of the Planning Board where site plan approval or a special permit is required and shall be to the satisfaction of the Inspector of Buildings where such approvals are not required.
2. Any encroachment permitted within the floodway in accordance with Section 8.1.5.1 shall comply with the floodplain requirements of the Massachusetts State Building Code.

#### 8.1.6 Requirements for Development within the Flood Plain District

1. For all development, and for proposed subdivisions, the related utilities and utility facilities, such as sewer, water, gas and electrical systems, shall be located and constructed to minimize or eliminate flood damage.
2. The design standards for utilities are as follows:
  - a. New or replacement water supply systems shall be designed to minimize, or eliminate infiltration of flood waters into the systems.
  - b. New or replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters.
  - c. On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.
3. Adequate drainage is provided.
4. In A and AE Zones all recreational vehicles to be placed on a site must be elevated and anchored in accordance with the zone's regulations for foundation and elevation requirements or be on the site for less than 180 consecutive days or be fully licensed and highway ready.

#### 8.1.7 Determination of Compliance with Requirements

For development that requires site plan approval or a special permit, the Planning Board shall have the responsibility to determine whether the proposed building or buildings and related site work conform to the requirements of the Floodplain District. For development for which site plan approval or a special permit is not required, the Inspector of Buildings shall have the responsibility to make this determination.

#### 8.1.8 Submission Requirements

All applications for permission to undertake development within the Floodplain District must be accompanied by sufficient information to permit determination regarding the compliance of the proposed development with the provisions of the Floodplain District. Such information includes, but is not limited to:

1. A plot plan showing the property boundaries, the location of existing buildings and site improvements, the location of new construction or improvements to existing buildings and the boundaries of the floodway and the 100-Year Flood Plain District within the property.
2. Base flood elevation for the property. Data from the FIRM maps must be used, if they provide data for the subject property.
  - a. Base Flood Elevation Data – Base flood elevation data is required for subdivision proposals or other developments greater than 50 lots or 5 acres, whichever is the lesser, within unnumbered A Zones.
  - b. Floodway Data – When proposing subdivisions or other developments greater than 50 lots or 5 acres (whichever is less), the proponent must provide technical data to determine base flood elevations for each developable parcel shown on the design plans.
3. Elevation of the lowest floor in the building.
4. Elevation of the lowest habitable floor, if different from the lowest floor.

#### 8.1.9 Exemption from Flood Plain District Requirements

Development may be exempted from the requirements of Floodplain District when the property owner, lessee, or other party of interest submits documentation that the Federal Government has reevaluated its designation of the property upon which the development would be located from that indicated in the ?, 2024 FIRM Maps and concluded that the property is not subject to flooding during a 100-year flood. For development which requires the approval of the Planning Board, including but not limited to site plan approval or a special permit, the documentation must be found to be satisfactory by the Planning Board before an exemption may be granted.

For development for which Planning Board approval is not required, the documentation must be found to be satisfactory by the Inspector of Buildings before an exemption may be granted. Such documentation may include, but is not limited to, a "Letter of Map Amendment."

#### 8.1.10 Variances to building code floodplain standards

The Town will request from the State Building Code Appeals Board a written and/or audible copy of the portion of the hearing related to the variance, and will maintain this record in the community's files.

The Town shall also issue a letter to the property owner regarding potential impacts to the annual premiums for the flood insurance policy covering that property, in writing over the signature of a community official that (i) the issuance of a variance to construct a structure below the base flood level will result in increased premium rates for flood insurance up to amounts as high as \$25 for \$100 of insurance coverage and (ii) such construction below the base flood level increases risks to life and property.

Such notification shall be maintained with the record of all variance actions for the referenced development in the floodplain overlay district.

#### 8.1.11 Variances to Zoning Bylaw related to community compliance with the National Flood Insurance Program (NFIP)

A variance from this floodplain bylaw must meet the requirements set out by State law, and may only be granted if: 1) Good and sufficient cause and exceptional non-financial hardship exist; 2) the variance will not result in additional threats to public safety, extraordinary public expense, or fraud or victimization of the public; and 3) the variance is the minimum action necessary to afford relief.

8.1.10 Designation of community Floodplain Administrator

The Town of Burlington hereby designates the Inspector of Buildings to be the official floodplain administrator for the Town

8.1.11 Requirement to submit new technical data

If the Town/City acquires data that changes the base flood elevation in the FEMA mapped Special Flood Hazard Areas, the Town/City will, within 6 months, notify FEMA of these changes by submitting the technical or scientific data that supports the change(s.) Notification shall be submitted to:

FEMA Region I Risk Analysis Branch Chief  
99 High St., 6th floor, Boston, MA 02110

And copy of notification to:

Massachusetts NFIP State Coordinator  
MA Dept. of Conservation & Recreation, 251 Causeway Street, Boston, MA 02114

8.1.12 Notification of Watercourse Alteration

In a riverine situation, the Floodplain Administrator shall notify the following of any alteration or relocation of a watercourse:

- 1) Select Board or Mayor, Planning Board and Conservation Commission of adjacent communities;
- 2) NFIP State Coordinator  
Massachusetts Department of Conservation and Recreation  
251 Causeway Street, 8<sup>th</sup> Floor  
Boston, MA 02114-2104
- 3) NFIP Program Specialist  
Federal Emergency Management Agency, Region 1  
99 High Street, 6<sup>th</sup> Floor  
Boston, MA 02110

or to act in any other manner in relation thereto.

Submitted by the Select Board at the request of  
Department/Name/Board/Committee

PASSED ( ) DEFEATED ( ) POSTPONED INDEFINITELY ( ) OTHER ( )