

## **FloodPlain Overlay District – DRAFT March 21, 2023**

### **1.0 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

### **2.0 DEFINITIONS**

For the purpose of this Chapter only, the following phrases shall have the following meanings:

**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.

**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.

**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.

**HIGHEST ADJACENT GRADE** means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

**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.

**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.*

**ONE HUNDRED YEAR FLOOD** is the flood having one (1) percent chance of being equaled or exceeded in any given year.

**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.

**REGULATORY FLOODWAY** - see FLOODWAY.

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**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, or AH.

**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.

**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.

**SUBSTANTIAL IMPROVEMENT** includes any repair, reconstruction or improvement of a structure, the cost of which equals or exceeds fifty (50) percent of the market value of the structure either (a) before the improvement or repair is started or (b) if the structure has been damaged and is being restored before the damage occurred.

**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.

**VARIANCE** means a grant of relief by a community from the terms of a flood plain management regulation.

**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 is presumed to be in violation until such time as that documentation is provided.

## ZONES, FLOOD

ZONE A means an area of special flood hazard without water surface elevations determined

ZONE A1-30 and ZONE AE means area of special flood hazard with water surface elevations determined

ZONE AH means areas of special flood hazards having shallow water depths and/or unpredictable flow paths between (1) and (3) feet, and with water surface elevations determined

ZONE AO means area of special flood hazards having shallow water depths and/or unpredictable flow paths between (1) and (3) ft. (*Velocity flow may be evident; such flooding is characterized by ponding or sheet flow.*)

ZONE A99 means area of special flood hazard where enough progress has been made on a protective system, such as dikes, dams, and levees, to consider it complete for insurance rating purposes. (Flood elevations may not be determined.)

ZONES B, C, AND X means areas of minimal or moderate flood hazards or areas of future-conditions flood hazard. (*Zone X replaces Zones B and C on new and revised maps.*)

## 3.0 OVERLAY

The flood plain district is an overlay district superimposed over underlying districts. All of the provisions of other sections of this By-Law applicable to the land and structures in the underlying districts shall continue to so apply except when such provisions conflict with the provisions of this Floodplain Overlay District Section; in case of such conflict, the provisions of this Floodplain Overlay District Section shall control.

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## 4.0 FLOODWAY MAP

The Floodplain District is herein established as an overlay district. The District includes all special flood hazard areas within the Town of Oxford designated as Zone A, AE, AH, AO, or A99 on the Worcester County Flood Insurance Rate Map (FIRM) dated June 21, 2023 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 Worcester County Flood Insurance Study (FIS) report dated June 21, 2023. 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.

## **5.0 FLOODPLAIN ADMINISTRATOR**

The Town hereby designates the position of Fire Chief/Emergency Management Director to be the official floodplain administrator.

## **6.0 FLOODWAY DATA**

- 6.0 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.
- 6.1 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.

## **7.0 REGULATIONS**

- 7.1 A building permit is required 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 filling, drilling, mining, paving and any other development that might increase flooding or adversely impact flood risks to other properties.
- 7.2 The Building Inspector shall not issue a building permit for an encroachment unless (a) the landowner or his agent has furnished the Building Inspector with a certificate of a registered professional engineer or architect certifying that the encroachment will not result in any increase in flood levels during the occurrence of the one hundred year flood and (b) the encroachment complies with the flood plain requirements of the State Building Code and with all of the applicable provisions of the By- Law.

- 7.3 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.
- 7.4 Within Zones AO and AH on the FIRM, adequate drainage paths must be provided around structures on slopes, to guide floodwaters around and away from proposed structures.
- 7.5 All subdivision proposals and development proposals in the floodplain overlay district shall be reviewed to assure that: (a) Such proposals minimize flood damage, (b) Public utilities and facilities are located & constructed so as to minimize flood damage, (c) Adequate drainage is provided.
- 7.6 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.
- 7.7 In A1-30, AH, 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.

## **8.0 VARIANCES TO BUILDING CODE FLOODPLAIN STANDARDS**

- 8.1 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.
- 8.2 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.
- 8.3 Such notification shall be maintained with the record of all variance actions for the referenced development in the floodplain overlay district.

## **9.0 VARIANCES TO LOCAL ZONING BYLAWS RELATED TO COMMUNITY COMPLIANCE WITH THE NATIONAL FLOOD INSURANCE PROGRAM (NFIP)**

A variance from these floodplain bylaws 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.

## **10.0 WATERCOURSE ALTERATIONS OR RELOCATIONS IN RIVERINE AREAS**

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

- Adjacent Communities, especially upstream and downstream
- Bordering States, if affected
- NFIP State Coordinator
  - Massachusetts Department of Conservation and Recreation
- NFIP Program Specialist
  - Federal Emergency Management Agency, Region I

## **11.0 REQUIREMENTS TO SUBMIT NEW TECHNICAL DATA**

If the Town acquires data that changes the base flood elevation in the FEMA mapped Special Flood Hazard Areas, the Town 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:

- NFIP State Coordinator
  - Massachusetts Department of Conservation and Recreation
- NFIP Program Specialist
  - Federal Emergency Management Agency, Region I

## **12.0 REFERENCE TO EXISTING REGULATIONS**

12.0 The Floodplain District is established as an overlay district to all other districts. All development in the district, including structural and non-structural activities, whether permitted by right or by special permit, must be in compliance with Chapter 131, Section 40 of the Massachusetts General Laws and with the following:

1. Sections of the Massachusetts State Building Code (780 CMR) which address floodplain and coastal high hazard areas;

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

12.1 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.

12.2 Any variances from the provisions and requirements of the above referenced state regulations may only be granted in accordance with the required variance procedures of these state regulations.

### **13.0 ABROGATION AND GREATER RESTRICTION**

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

### **14.0 DISCLAIMER OF LIABILITY**

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

### **15.0 SEVERABILITY**

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

### **16.0 ENFORCEMENT**

16.1 Building Code Enforcement

- i. The Building Inspector is responsible for the enforcement of the Building Code.
- ii. The specific administration and enforcement is detailed in the Town of Oxford Zoning Bylaw Chapter XIV.

16.2 Wetlands Protection Act Enforcement

- i. Violations of the Wetlands Protection Act (WPA), M.G.L. Chapter 131, Section 40, Regulations 310 CMR 10.00 and Orders of Conditions, are the responsibility of the Conservation Commission as outlined in WPA Regulations and the

Department of Environmental Protection (DEP) Wetlands Enforcement Manual.

- iii. The Conservation Commission will issue a Notice of Violation for minor violations that have little or no impact on resource areas, or a violation that is an isolated event. Such Notice of Violation shall require the violator to stop activity that is in violation and/or restore any impacted resource area.
- iv. For severe violations that are harmful to resource areas or violations that were not corrected by a Notice of Violation, the Conservation Commission will issue an Enforcement Order ordering the property owner or violator to cease and desist activity that is in violation and restore resource areas.
- v. For instances where an Enforcement Order is not adhered to, the Conservation Commission can pursue civil lawsuit in Superior Court with Board of Selectmen approval.

16.3 Other NFIP Enforcement

- i. Other NFIP floodplain development requirements are enforced by the Building Inspector in accordance with Chapter XIV of this By-Law.
- ii. Such non-compliant requirements that increases flood risk, the placement of recreational vehicles in the floodplain, re-grading of large commercial properties, construction of agricultural structures, placement of tanks, pools, fencing, temporary construction offices, and other structures.