

## **Article 19 – Update to Section 185-44, Floodplain District.**

To see if the Town will vote to amend the Zoning Bylaw Chapter 185 by updating the Zoning Map reference to the Floodplain District, and amending Section 185-44 “Floodplain District” as set forth in the complete text on file in the Offices of the Town Clerk; or take any other action relative thereto.

### **§ 185-44. Floodplain District. [Added ATM 5-1-1989 by Art. 31; amended 5-7-2012 ATM by Art. 10; **amended 5-2-2022 ATM by Art. x**]**

- A. Purpose. The purpose of the Floodplain 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; and
  - 6) Reduce damage to public and private property resulting from flooding waters.
- B. Boundaries. The Floodplain District is herein established as an overlay district. The District includes all special flood hazard areas designated within Dover on Norfolk County’s Flood Insurance Rate Map (FIRM) dated [effective date], and issued by the Federal Emergency Management Agency for the administration of the National Flood Insurance Program. These maps indicate the 1%-chance regulatory floodplain. 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 Flood Insurance Study (FIS) report dated July 6, 2021. The effective FIRM and FIS report are incorporated herein by reference and are on file with the Town Clerk, Planning Board, Building Official, and Conservation Commission.
- C. Definitions: The following definitions shall apply to this Section 184-44:

**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]

**NEW CONSTRUCTION.** Structures for which the start of construction commenced on or after the effective date of the first floodplain management code, regulation, bylaw, 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.

**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 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]

**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.*)

ZONE V means area of special flood hazards without water surface elevations determined, and with velocity, that is inundated by tidal floods (coastal high hazard area)

ZONE V1-30 and ZONE VE (*for new and revised maps*) means area of special flood hazards, with water surface elevations determined and with velocity, that is inundated by tidal floods (coastal high hazard area)

- D. Abrogation. The floodplain management regulations found in this Floodplain District section shall take precedence over any less restrictive conflicting local laws, bylaws or codes.
- E. Disclaimer of Liability. The degree of flood protection required by this bylaw is considered reasonable but does not imply total flood protection.
- F. Designation of Floodplain Administrator. The Building Inspector shall serve as the official floodplain administrator for the Town of Dover.
- G. Requirement to Submit New Technical Data. If the Town of Dover acquires data that changes the base flood elevation in the FEMA mapped Special Flood Hazard Areas, the Town of Dover 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

H. Variances. When a variance is issued by the State Building Code Appeals Board, the Town will request a written and/or audible copy of the portion of the hearing related to the variance, and will maintain this record in the Town Clerk's Office.

The Town of Dover 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.

I. Variances to local Zoning Bylaws. 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.

J. Enforcement. Section 185-44 shall be enforced subject to the provisions of Section 185-47 of the Zoning Bylaws.

K. Permits Required. Permits are required for all proposed development in the Floodplain Overlay District.

The Town of Dover 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.

Dover's permit review process includes the use of a checklist of 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 submit the completed checklist demonstrating that all necessary permits have been acquired.

L. Permitted uses. The following uses of low flood damage potential and causing no obstructions to flood flows are encouraged, provided they are permitted in the underlying district and they do not require structures, fill, or storage of

materials or equipment:

- (1) Agricultural uses, such as farming, grazing, truck farming, and horticulture.
- (2) Forestry and nursery uses.
- (3) Outdoor recreational uses, including fishing, boating, and play areas.
- (4) Conservation of water, plants, wildlife.
- (5) Wildlife management areas, and foot, bicycle, and/or horse paths.
- (6) Temporary nonresidential structures used in connection with fishing, growing, harvesting, storage, or sale of crops raised on the premises.
- (7) Buildings lawfully existing prior to the adoption of these provisions.

**M. Subdivision Proposals.**

- (1) 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.
- (2) Base flood elevation data for subdivision proposals:

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.

**N. Unnumbered A Zones.**

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 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.

**O. Floodway encroachment.**

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.

- P. In Zones AE, along watercourses that have a regulatory floodway designated on the Norfolk County FIRM, encroachments are prohibited in the regulatory floodway unless certification by a registered professional engineer is provided by the applicant demonstrating, through hydrologic and hydraulic analyses performed in accordance with standard engineering practice, that such encroachment shall not result in any increase in flood levels during the occurrence of the base flood discharge.
- Q. Watercourse alterations or relocations in riverine areas
- R. In a riverine situation, the Building Commissioner 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  
251 Causeway Street, 8<sup>th</sup> floor  
Boston, MA 02114

NFIP Program Specialist:  
Federal Emergency Management Agency, Region I  
99 High Street, 6th Floor  
Boston, MA 02110

- S. Recreational Vehicles. In A1-30, AH, AE Zones, V1-30, VE, and V 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.
- T. Severability. 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.