

## **ARTICLE 18 - FLOODPLAIN DISTRICT**

### **Planning Board**

To see if the Town will vote to amend the Zoning Bylaw by deleting Section 185-44 entitled "Floodplain District" in its entirety and replacing it with a new Section 185-44 entitled "Floodplain District," with the complete text on file in the Offices of the Town Clerk and the Planning Board; or take any other action relative thereto.

#### **185-44 Floodplain District.**

**A. Definitions.** The definitions below apply when used in this section 185-44:

**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, 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.

**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. [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 Building Code]

**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 floodplain management regulations. A Structure or other Development without the elevation certificate, other certifications, or other evidence of compliance required in 44 CFR 60.3 is presumed to be in Violation until such time as that documentation is provided. [US Code of Federal Regulations, Title 44, Part 59]

**B. 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;
- 6) Reduce damage to public and private property resulting from flooding waters; and
- 7) Maintain the Town's eligibility in the National Flood Insurance Program (NFIP) by adopting floodplain management requirements that meet the applicable standards of the NFIP regulations set forth in 44 CFR 60.3.

**C. Boundaries.**

The Floodplain District is herein established as an overlay district. The District includes all Special Flood Hazard Areas within the Town of Dover designated as Zone A, AE, AH, AO, or A99 on the Norfolk County Flood Insurance Rate Map (FIRM) dated July 6, 2021 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 Norfolk County Flood Insurance Study (FIS) report dated July 6, 2021. The FIRM and FIS report are incorporated herein by reference and are on file with the Town Clerk, Planning Board, Building Inspector and Conservation Commission.

**D. Permitting and enforcement.**

- 1) The Town hereby designates the Building Inspector to be the official floodplain administrator.

- 2) Permitting Requirements. One seeking proposed Construction or other Development in the Floodplain 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, must first obtain a Floodplain Permit from the Building Inspector in accordance with this Bylaw and applicable provisions of the State Building Code.

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 District. The proponent must demonstrate that all necessary permits have been acquired.

- 3) Allowed Uses within the limits of the Floodway. The following Uses are allowed within the limits of the Floodway provided that the owner or applicant has obtained all necessary local permits or approvals:
  - a. Maintenance and repair of existing Structures and improvement of existing Structures provided that any such improvement is either within the existing Structure or above the base flood elevation;
  - b. Maintenance, repair and replacement of existing Structures in a driveway or private way or in an associated easement. Structures referred to herein include banks, walls, culverts, bridges or similar Structures; and
  - c. Any activity, construction or installation conducted solely for the purpose of environmental clean-up or remediation, and required or approved by the United States Environmental Protection Agency or the Massachusetts Department of Environmental Protection.

## **E. Standards for Enforcement**

- 1) Floodway encroachment.

In Zones A 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 by the Town 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 Zones A 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.

2) 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 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.

3) Subdivision proposals.

All subdivision proposals and Development proposals in the Floodplain District shall be reviewed to assure that:

- a. Such proposals minimize flood damage;
- b. Public utilities and facilities are located and constructed so as to minimize flood damage; and
- c. Adequate drainage is provided.

4) 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.

5) Recreational Vehicles.

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.

6) Watercourse alterations or relocations in riverine areas.

In a riverine situation, the Building Inspector 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, 8th floor, Boston, MA 02114
- NFIP Program Specialist  
Federal Emergency Management Agency, Region I  
99 High Street, 6th Floor, Boston, MA 02110

**F. Variances to Building Code floodplain standards.**

A permit applicant may appeal the denial of a Floodplain Permit due to noncompliance with the State Building Code to the Building Code Appeals Board. If that appeal is taken, the Town shall request from the State Building Code Appeals Board a written 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 and applicant (if different) 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 District.

**G. Variances to local Zoning Bylaws.**

A permit applicant may seek a Variance from this Floodplain Bylaw in accordance with the process set forth in Dover Zoning Bylaw Section 185-51. Such a Variance may only be granted if:

- 1) the proposed project meets the requirements set out by State law;
- 2) Good and sufficient cause and exceptional non-financial hardship exist;
- 3) the Variance will not result in additional threats to public safety, extraordinary public expense, or fraud or victimization of the public; and
- 4) the Variance is the minimum action necessary to afford relief.

**H. Requirement 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 shall, within 6 months, notify FEMA of these changes by submitting the technical or scientific data that supports the change(s.) Such notification shall be submitted to:

NFIP State Coordinator  
Massachusetts Department of Conservation and Recreation  
251 Causeway Street, 8th floor, Boston, MA 02114

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

**I. Abrogation and greater restriction section.**

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

**J. Disclaimer of liability.**

The degree of flood protection required by Section 185-44 of this bylaw is considered reasonable but does not imply total flood protection.

**K. Severability section.**

If any section, provision or portion of Section 185-44 of this bylaw is deemed to be unconstitutional or invalid by a court, the remainder of this Section 185-44 shall be effective.