

3.6. Floodplain Overlay District (added May 29, 2013)

A. Purpose. The purposes of the Floodplain Overlay District are 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 a reduction in water quality, contamination, and/or 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.

B. Floodplain District Boundaries and Base Flood Elevation and Floodway Data

- 1) The Floodplain District is herein established as an overlay district. The District includes special flood hazard areas designated on the Bernardston Flood Insurance Rate Map (FIRM), Panels 1-7, issued by the Federal Emergency Management Agency (FEMA) for the administration of the NFIP dated July 2, 1980, as Zones A, A1, A2, A3, A4, A5, A7 and A10, and the FEMA Flood Boundary & Floodway Map dated July 2, 1980, both maps which indicate the 100-year regulatory floodplain. The exact boundaries of the District may be defined by the 100-year base flood elevations shown on the FIRM and further defined by the Flood Insurance Study (FIS) report dated January 2, 1980. The FIRM, Flood Boundary & Floodway Map, and FIS report are incorporated herein by reference and are on file with the Town Clerk, Planning Board, and Building Inspector.
- 2) Floodway Data: In Zones A, A1, A2, A3, A4, A5, A7 and A10 along watercourses that have not had a regulatory floodway designated, the best available Federal, State, local, or other floodway data shall be used as outlined in the State Building Code 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.
- 3) Base Flood Elevation Data: Base flood elevation data is required for subdivision proposals or other developments greater than three lots or five (5) acres, whichever is less, where a portion of the proposed development would be located within any unnumbered A Zone flood hazard area.

C. Administration.

- 1) 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.
- 2) Disclaimer of Liability: The degree of flood protection required by this bylaw is considered reasonable but does not imply total flood protection.
- 3) Severability: If any section, provision or portion of this bylaw [ordinance] is deemed to be unconstitutional or invalid by a court, the remainder of the ordinance shall be effective.

D. Definitions

ANIMAL FEEDLOT is any site used regularly for the feeding of ten (10) or more animals for agricultural/commercial purposes.

AREA OF SPECIAL FLOOD HAZARD is the land in the floodplain within a community subject to a one percent or greater chance of flooding in any given year. The area may be designated as Zone A, AO, AH, A1-30, AE, or A99.

BASE FLOOD means the flood having a one percent chance of being equaled or exceeded in any given year (also known as the “one-hundred-year flood”).

DEVELOPMENT means any manmade 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 materials

DISTRICT means floodplain district.

FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA) administers the National Flood Insurance Program. FEMA provides a nationwide flood hazard area mapping study program for communities as well as regulatory standards for development in the flood hazard areas.

FLOOD BOUNDARY AND FLOODWAY MAP means an official map of a community issued by FEMA that depicts, based on detailed analyses, the boundaries of the 100-year and 500-year floods and the 100-year floodway. (For maps done in 1987 and later, the floodway designation is included on the FIRM.)

FLOOD HAZARD BOUNDARY MAP (FHBM.) An official map of a community issued by the Federal Insurance Administrator, where the boundaries of the flood and related erosion areas having special hazards have been designated as Zone A or E. [US Code of Federal Regulations, Title 44, Part 59]

FLOOD INSURANCE RATE MAP (FIRM) means an official map of a community on which FEMA has delineated both the Areas of Special Flood Hazard and the Risk Premium Zones applicable to the community.

FLOODWAY means the channel of a river 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.

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]

HAZARDOUS MATERIALS means any substance or mixture of physical, chemical, or infectious characteristics posing a significant, actual, or potential hazard to water supplies or other hazards to human health if such substance or mixture were discharged to land or water. Hazardous materials include, without limitation: synthetic organic chemicals; petroleum products; heavy metals; radioactive or infectious wastes; acids and alkalis; solvents and thinners

in quantities greater than normal household use; and all substances defined as hazardous or toxic under M.G.L. c.21C and 21E and 310 CMR 30.00.

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 means the lowest floor of the lowest enclosed area (including basement or cellar). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of National Flood Insurance Program (NFIP) Regulations 60.3.

MANUFACTURED HOME means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. For floodplain management purposes the term "manufactured home" also includes park trailers, travel trailers, and other similar vehicles placed on a site for longer than 180 consecutive days. For insurance purposes, the term "manufactured home" does not include park trailers, travel trailers, and other similar vehicles.

MANUFACTURED HOME PARK OR SUBDIVISION means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

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] **ONE-HUNDRED-YEAR FLOOD** - see **BASE FLOOD**.

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.

RIVER means a natural flowing body of water that empties to any ocean, lake, or other river and which flows throughout the year.

RIVERINE means relating to or resembling a river, or located beside a river.

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 DAMAGE means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

SUBSTANTIAL IMPROVEMENT means any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds 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. For the purposes of this definition, "Substantial Improvement" is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure.

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)

E. The Town of Bernardston hereby designates the position of Franklin County Regional Building Inspector to be the official floodplain administrator for the Town.

F. NOTIFICATION OF WATERCOURSE ALTERATION AND NEW TECHNICAL DATA

In a riverine situation, the Bernardston Conservation Commission or Building Inspector shall notify the following of any alteration or relocation of a watercourse:

Adjacent Communities

Bordering States

NFIP State Coordinator

Massachusetts Department of Conservation and Recreation

251 Causeway Street, Suite 600-700

Boston, MA 02114-2104

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

If the Town 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

G. 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.

H. Use Regulations

1) Reference to Existing Regulations.

All development in the Floodplain 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 (the Wetlands Protection Act) and with the following:

- Sections of the Massachusetts State Building Code (780 CMR) which address floodplain hazard areas;
- Wetlands Protection Regulations, Department of Environmental Protection (DEP) (currently 310 CMR 10.00);
- Inland Wetlands Restriction, DEP (currently 310 CMR 13.00); and
- Minimum Requirements for the Subsurface Disposal of Sanitary Sewage, DEP (currently 310 CMR 15, Title 5).

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.

2) Permits are required for all proposed development in the Floodplain Overlay District.

The Town of Bernardston 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.

3) Assure That All Necessary Permits Are Obtained.

Bernardston'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.

4) Subdivision Proposals.

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.

5) Permitted Uses.

The following uses with low flood damage potential and causing no obstructions to flood flows are allowed provided they are permitted in the underlying district and they do not require structures, fill, or storage of materials or equipment:

- a. Agricultural uses such as farming, grazing, truck farming, horticulture, aquaculture, etc.
- b. Forestry and nursery uses.
- c. Outdoor recreational uses not requiring structures, including fishing, boating, soccer fields, etc.
- d. Conservation of water, plants, wildlife.
- e. Wildlife management areas, foot, bicycle, and/or horse paths.
- f. Temporary non-residential structures used in connection with fishing, growing, harvesting, storage, or sale of crops raised on the premises.
- g. Buildings lawfully existing prior to the adoption of these provisions.

6) Prohibited Uses

- a. No altering, dumping, filling, or removal of riverine materials or dredging is permitted. Maintenance of the floodway may be done under requirements of M.G.L. Ch. 131, Sec. 40, and any other applicable laws, by-laws, and regulations, and must be done using best management practices.
- b. No new impoundments, dams, or other water obstructions may be constructed within the district.
- c. Commercial or industrial uses are prohibited in the district.
- d. Manufactured homes placed on a site for longer than 180 consecutive days and manufactured home parks or subdivisions are prohibited in the district.
- e. Storage of vehicles or equipment within the floodway is prohibited.
- f. Dumping of trash, garbage or other materials in the floodway is prohibited.
- g. Construction of any kind on slopes of greater than 25% within the district is prohibited.
- h. Storage or processing of hazardous materials is prohibited.
- i. All other uses not specifically permitted (or allowed by site plan approval or Special Permit) within the floodplain district are prohibited.

7) Restricted Uses

- a. No cutting of forest or vegetation shall occur within fifty (50) feet of the floodway. In the area between fifty (50) and one hundred (100) feet from the floodway, no more than 50% of existing forest shall be cut. Exempted from the requirements in this section are: the cutting or management of state-listed invasive species; removal of woody or flood debris; or restoration activities permitted by the Conservation Commission.
- b. Fenced animal grazing areas must be located at least fifty (50) feet from the floodway, with a naturally vegetated fifty-foot (50-foot) buffer strip to reduce runoff, and a fence to prevent animals from encroaching on the buffer strip.
- c. 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.
- d. 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.

8) Uses Allowed by Special Permit

- a. No structure or building in the Floodplain District shall be erected, constructed, substantially improved, reconstructed, or otherwise created or moved; no earth or other materials dumped, filled, excavated, or transferred, unless a Special Permit is granted by the Planning Board.
- b. The following uses may be allowed by Special Permit in accordance with the Special Permit regulations of this Zoning Bylaw, Section 5300, and all requirements of Section 3500:
 - i. Single family residences or residential subdivisions.
 - ii. Residential accessory uses including garages, driveways, private roads, utility rights-of-way and on-site waste-water disposal systems.
 - iii. Manufactured homes for not more than 180 consecutive days between May 1 and October 31 of each year.

9) Special Permit Procedures

- a. The following Special Permit requirements apply in the Floodplain District:
 - i. Within Zone A, where base flood elevation is not provided on the FIRM, the applicant shall obtain any existing base flood elevation data as outlined in the State Building Code,
 - ii. No encroachments (including fill, new construction, substantial improvements to existing structures, or other development) shall be allowed unless it is demonstrated by the applicant that the proposed development, as a result of compensating actions, will not result in any increase in flood levels during the occurrence of a 100-year flood in accordance with the Federal Emergency Management Agency's regulation for the National Flood Insurance Program.
 - iii. Construction on slopes of 10-25% within the floodplain district shall require the preparation and submittal of an erosion and sedimentation control plan describing best management practices which will be employed to prevent construction-related impacts to water quality.
 - iv. Utilities and facilities shall be so located and constructed in order to minimize or eliminate flood damage.
 - v. Adequate methods shall be provided for the periodic disposal of sewage, refuse and other wastes resulting from the uses permitted on the site.
 - vi. The proposed use shall comply in all respects to the provisions of the underlying district in which the land is located.
 - vii. The Board may specify such additional requirements and conditions as it finds necessary to protect the health, safety and welfare of the public and the occupants of the proposed use.

- viii. There shall be established a "routing procedure" such that within 10 days of the receipt of the application, the Town Clerk will transmit one copy of the development plan to the Planning Board, Conservation Commission, Board of Health, Zoning Board of Appeals, and Building Inspector. The reviewing parties should forward recommendations to the Planning Board within thirty-five (35) from the date of transmission of the application from the Town Clerk to the reviewing parties.
 - ix. Existing and proposed contour intervals of the site and elevations of existing and proposed structures must be included on plan proposal. To the maximum extent feasible, structures shall be located outside of the Floodplain District.
 - x. All plans submitted for development in the Floodplain District must be prepared by a registered professional engineer, registered architect, registered landscape architect, or registered land surveyor.
- b. In addition to complying with the provisions of Section 5300 Special Permits of the Bernardston Zoning Bylaws, in order to issue a Special Permit, the Planning Board shall find that the proposed use and any associated public utilities or facilities in the Floodplain District must:
- i. Not create flood hazards which are detrimental to the public health, safety and welfare and will minimize flood damage.
 - ii. Comply in all respects to the provisions of the underlying District within which the land is located.
 - iii. Comply with all applicable State and Federal laws, including the Massachusetts Wetlands Protection Act (M.G.L. Ch. 131, Sec. 40).
 - iv. Be situated in a portion of the site that will most likely conserve wetland vegetation.
 - v. Be integrated into the existing landscape through features such as vegetative buffers.
 - vi. Be located outside of the Floodplain District to the maximum extent feasible.
 - vii. Not result in erosion or sedimentation.
 - viii. Not result in water pollution.
 - ix. Not result in drainage onto abutting properties and must provide adequate drainage on-site to reduce exposure to flood hazards.

10) Enforcement and Penalties

a. Violations

Any development activity that has commenced or is conducted contrary to this bylaw may be restrained by injunction or otherwise abated in a manner provided by law.

- b. Notice of Violation
- c. When the Building Inspector determines that an activity is not being carried out in accordance with the requirements of this bylaw, he/she shall issue a written notice of violation to the owner of the property. The notice of violation shall contain:
 - i. the name and address of the owner applicant;
 - ii. the address when available or the description of the building, structure, or land upon which the violation is occurring;
 - iii. a statement specifying the nature of the violation;
 - iv. a description of the remedial measures necessary to bring the development activity into compliance with this bylaw and a time schedule for the completion of such remedial action;
 - v. a statement of the penalty or penalties that may be assessed against the person to whom the notice of violation is directed;
 - vi. a statement that the determination of violation may be appealed to the municipality by filing a written notice of appeal within fifteen (15) days of service of notice of violation.

d. Restoration of Lands

Any violator may be required to restore land to its undisturbed condition. In the event that restoration is not undertaken within a reasonable time after notice, the Town of Bernardston may take necessary corrective action at the owner's expense, the cost for which will be secured by a lien in accordance with M.G.L. Chapter 40, Section 58 (Municipal Charges Lien Statute).