



3.4.2. *Floodplain District* (Added 11/8/93 Art. 25) (Amended 5/5/11 Art. 22)

- A. Purpose. The purposes of the Floodplain District are to protect the public health, safety, and general welfare, to protect human life and property from the hazards of periodic flooding, to preserve the natural flood control characteristics, and the flood storage capacity of the flood-plain, and to preserve and maintain the ground water table and water recharge areas within the floodplain.
- B. Definitions. These definitions shall only apply to this Floodplain District section of the zoning bylaw.

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, A99, V1-30, or ~~VE or V.~~

BASE FLOOD means the flood having a one percent chance of being equaled or exceeded in any given year.

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 equipment or materials.

DISTRICT means floodplain district.

EXISTING MANUFACTURED HOME PARK OR SUBDIVISION means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of the floodplain management regulations adopted by a community.

EXPANSION TO AN EXISTING MANUFACTURED HOME PARK OR SUBDIVISION means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

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 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.

FLOOD INSURANCE STUDY means an examination, evaluation, and determination of flood hazards, and if appropriate, corresponding water surface elevations or an examination, evaluation and determination of flood-related erosion hazards.

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 **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.****

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 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 greater 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 means, for floodplain management purposes, structures for which the “start of construction” commenced on or after the effective date of a floodplain management regulation adopted by a community. For the purpose of determining insurance rates, NEW CONSTRUCTION means structures for which the “start of construction” commenced on or after the effective date of an initial FIRM or after December 31, 1974, whichever is later. 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.~~

NEW MANUFACTURED HOME PARK OR SUBDIVISION means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of the floodplain management regulations adopted by a community.

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.

REGULATORY FLOODWAY see FLOODWAY



SPECIAL FLOOD HAZARD AREA means an area having special flood and/or flood-related erosion hazards, and shown on an FHBM or FIRM as Zone A, AO, A1-30, AE, A99, AR, AH, V, VO, V1-30, VE. [Base Code, Chapter 2, Section 202]

START OF CONSTRUCTION ~~includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, or floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building. 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. Structure, for insurance coverage purposes, means a walled and roofed building, other than a gas or liquid storage tank, that is principally above ground and affixed to a permanent site, as well as a manufactured home on foundation. For the latter purpose, the term includes a building while in the course of construction, alteration, or repair, but does not include building materials or supplies intended for use in such construction, alteration, or repair, unless such materials or supplies are within an enclosed building on the premises.

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 reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the “start of construction” of the improvement. This term includes structures which have incurred “substantial damage,” regardless of the actual repair work performed.

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.

ZONE A means the 100-year floodplain area where the base flood elevation (BFE) has not been determined. To determine the BFE, use the best available federal, state, local or other data.

ZONE A1 - A30 AND ZONE AE (for new and revised maps) means the 100-year floodplain where the base flood elevation has been determined.

ZONES B, C and X are areas identified in the community Flood Insurance Study as areas of moderate or minimal flood hazard. Zone X replaces Zones B and C on new and revised maps.

C. District Delineation ~~(Amended 5/5/11 Art. 22)~~

1. The Floodplain District includes all special flood hazard areas within the Town of Spencer designated as Zone A and AE on the Worcester County Flood Insurance Rate Map (FIRM) issued by the Federal Emergency Management Agency (FEMA) for the administration of the National Flood Insurance Program. ~~The map panels of the Worcester County FIRM that are wholly or partially within the Town of Spencer are panel numbers 25027C0566E, 25027C0567E, 25027C0568E,~~



~~25027C0569E, 25027C0590E, 25027C0757E, 25027C0759E, 25027C0767E, 25027C0780E, 25027C0786E and 25027C0787E dated July 4, 2014.~~ The exact boundaries of the District may be defined by the 100-year base flood elevations shown on the FIRM dated June 21, 2023 and further defined by the Worcester County Flood Insurance Study (FIS) report dated ~~July 4, 2014~~ June 21, 2023. The FIRM and FIS report are incorporated herein by reference and are on file with the Town Clerk and the Office of Development and Inspectional Services.

2. ~~Within Zone A, where the 100-year flood elevation is not provided on the FIRM, the developer/applicant shall obtain any existing flood elevation data and it shall be reviewed by the Building Inspector. If the data is sufficiently detailed and accurate it shall be relied upon to require compliance with this bylaw.~~

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.

D. Base Flood Elevation and Floodway Data ~~(Amended 5/5/11 Art. 22)~~

1. Floodway Data. In Zone 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 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 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.

E. Notification Of Watercourse Alteration. The following entities are to be notified of any alteration or relocation of a watercourse in a riverine situation: (Amended 5/5/11 Art. 22)

1. Adjacent Communities
2. NFIP State Coordinator



3. NFIP Program Specialist

F. Use Regulations

~~1. Reference to Existing Regulations. 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:~~

~~a) Section of the Massachusetts State Building Code which addresses floodplain and coastal high hazard areas. (currently 780 CMR-120.G, "Flood Resistant Construction in Coastal Dunes);~~

~~b) Wetlands Protection Regulations, Department of Environmental Protection (DEP) (currently 310 CMR 13.00);~~

~~c) Inland Wetlands Restriction, DEP (currently 302 CMR 6.00); (Amended 5/5/11 Art. 22)~~

~~d) Minimum Requirements for the Subsurface Disposal of Sanitary Sewage, DEP (currently 310 CMR 15, Title 5);~~

~~e) 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.~~

~~(reserved for future use)~~

2. Other Use Regulations

~~a) In Zones A and AE, along watercourses that have a regulatory floodway designated in the Town Of Spencer on the Worcester County FIRM, encroachments are prohibited in the regulator floodway which would result in any increase in flood levels within the community during the occurrence of the base flood discharge. (Amended 5/5/11 Art. 22)~~

~~(reserved for future use)~~

b) Review all subdivision proposals to assure that:
1) such proposals minimize flood damage;
2) all public utilities and facilities are located and constructed to minimize or eliminate flood damage; and
3) adequate drainage is provided to reduce exposure to flood hazards.

G. Permitted Uses. The following uses of low flood-damage potential and causing no obstructions to flood flows shall be permitted provided they do not require structures, fill, or storage of materials or equipment:



1. Agricultural uses such as farming, grazing, truck farming, horticulture, etc.
 2. Forestry and nursery uses
 3. Outdoor recreational uses, including fishing, boating, play areas, etc.
 4. Conservation of water, plants, wildlife
 5. Wildlife management areas, foot, bicycle, and/or horse paths
 6. Temporary non-residential 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.
- H. Special Permits. No structure or building shall be erected, constructed, substantially improved, reconstructed (except as provided in Paragraph F above), or otherwise created or moved; no earth or other materials dumped, filled, excavated, or transferred, unless a special permit is granted. All Special Permits required under this section shall be issued by the Zoning Board of Appeals except that the Planning Board shall issue them in cases where Site Plan Review and/or a Planning Board Special Permit in Section 4.2 Use Table, Principal Uses is required. Said Board may issue a special permit hereunder (subject to other provisions of this bylaw) if the application is compliant with the following provisions (Amended 11/17/16 Art. 14):
1. The proposed use shall comply in all respect to the provisions of the underlying District in which the land is located.
 2. Within 10 days of the receipt of the application, the Board shall transmit one copy of the development plan to the Conservation Commission, and Board of Health. Final action shall not be taken until reports have been received from the above Boards or until 35 days have elapsed.
 3. ~~All encroachments, including fill, new construction, substantial improvements to existing structures, and other development are prohibited in the floodway unless certification by a registered professional engineer is provided by the applicant demonstrating that such encroachment shall not result in any increase in flood levels during the occurrence of the 100-year flood.~~

(reserved for future use)
 4. The Board may specify such additional requirements and conditions as it finds necessary to protect the health, safety, and welfare of the public and occupants of the proposed use.

I. Designation of community Floodplain Administrator

The Town of Spencer hereby designates the position of the Town Planner/Conservation Agent to be the official floodplain administrator for the Town.

J. Permits are required for all proposed development in the Floodplain Overlay District. The Town Spencer 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.

K. Assure that all necessary permits are obtained. 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.

M. 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. Recreational vehicles. In A1-30, AH, 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.

O. 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 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

P. Variances to building code floodplain standards. If the State issues variances to the flood-resistant standards as found in the state building code, the community will use this text for local adoption:

The Town/City 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/City 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.

Q. 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.

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

S. Disclaimer of liability. The degree of flood protection required by this bylaw [ordinance] is considered reasonable but does not imply total flood protection.

T. Severability section. 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.