

***** PLEASE NOTE: THIS DRAFT IS CURRENT AS OF 04.04.23, AND IS STILL PENDING FINAL FEMA REVIEW. ON MARCH 28TH, 2023, THE PLANNING BOARD AND TOWN COUNSEL MET IN AN OPEN MEETING TO DISCUSS THIS BYLAW AND GIVE ADDITIONAL FEEDBACK. A SECOND PUBLIC MEETING WILL BE HELD ON 04/11. THIS DRAFT IS NOT FINAL AND WILL BE UPDATED AFTER APRIL 11TH *****

ARTICLE XIII

Floodplain District

§175-13.1 Purpose. The purpose of the Floodplain Overlay District is to:

1. Ensure public safety by 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

§175-13.2 Definitions. The following definitions should be applied to the Floodplain Overlay District. Terms and words not defined herein but defined by FEMA shall have the meanings given therein unless a contrary intention clearly appears.

BASE FLOOD ELEVATION. The elevation of surface water resulting from a flood that has a 1% chance of equaling or exceeding that level in any given year. The BFE is shown on the Flood Insurance Rate Map (FIRM) for zones AE, AH, A1–A30, AR, AR/A, AR/AE, AR/A1– A30, AR/AH, AR/AO, V1–V30 and VE.

DEVELOPMENT. 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.

ELEVATION CERTIFICATE. An elevation certificate is a document that lists a building's location, lowest point of elevation, flood zone and other characteristics, according to FEMA. It is used to enforce local building ordinances and to help determine flood insurance rates.

FLOOD BOUNDARY AND FLOODWAY MAP. 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.

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,~~ **special flood hazard areas.**

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. 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. The highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

HISTORIC STRUCTURE. Any structure that is:

1. 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;
2. 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;
3. 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
4. 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 ADJACENT GRADE. The lowest point of the ground level immediately next to a building.

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.*

RECREATIONAL VEHICLE. A vehicle which is:

1. Built on a single chassis;
2. 400 square feet or less when measured at the largest horizontal projection;
3. Designed to be self-propelled or permanently towable by a light duty truck; and
4. 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. 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.

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.

1. 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. For floodplain management purposes, a walled and roofed building **including**. **This definition also includes** a gas or liquid storage tank; that is principally above ground, as well as a manufactured home.

SUBSTANTIAL DAMAGE. **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. Work on structures that are determined to be substantially damaged is considered to be substantial improvement, regardless of the actual repair work performed.**

SUBSTANTIAL IMPROVEMENT. **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 (or smaller percentage if established by the community) before the “start of construction” of the improvement. This term includes structures that 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. A grant of relief by a community from the terms of a flood plain management regulation.

VIOLATION. 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.

WATERCOURSE. Watercourse includes any canal, channel, conduit, creek, culvert, ditch, drain, gully, ravine, reservoir, perennial stream, wash, waterway or wetland. Watercourses do not include man-made drainage ways.

ZONES, FLOOD –

ZONE A. An area of special flood hazard without water surface elevations determined

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

ZONE AH. 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. An 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. An 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. 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. An 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. An area of special flood hazards, with water surface elevations determined and with velocity, that is inundated by tidal floods (coastal high hazard area)

§175-13.3 Location. The Floodplain District is herein established as an overlay district.

- a. The District includes all special flood hazard areas designated within the Town of Norton, Bristol County Flood Insurance Rate Map (FIRM) **dated July 6, 2021** issued by the Federal Emergency Management Agency 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 Bristol 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 Official, and Conservation Commission.
- b. The map panels of the Bristol County FIRM that are wholly or partially within the Town of Norton are Panel Numbers 25005C0039F, 25005C0043F, 25005C0044F, 25005C0109F, 25005C0127F, 25005C0131F, 25005C0132F, 25005C0134F, 25005C0136F, 25005C0137F, 25005C0141F, 25005C0151F and 25005C0153F dated July 7, 2009, and Panel Numbers 25005C0107G, 25005C0126G, 25005C0128G, 25005C0129G, and 25005C0133G, dated July 16, 2015.

§ 175-13.4. Use regulations.

A. Reference to existing regulations.

(1) The Floodplain District is established as an overlay district to all other districts. All development in the district, including structural and nonstructural activities, whether permitted by right or by special permit, shall comply with MGL c. 131, § 40, and with the following:

- (a) Section of the Massachusetts State Building Code which addresses floodplain and coastal high-hazard areas (**currently 780**);
- (b) Wetlands Protection Regulations, Department of Environmental Protection (DEP) (currently 310 CMR 10.00);

- (c) Inland Wetlands Restriction, DEP (currently 310 CMR 13.00);
- (d) Coastal Wetlands Restriction, DEP (currently 310 CMR 12.00);
- (e) Minimum Requirements for the Subsurface Disposal of Sanitary Sewage, DEP (currently 310 CMR 15, Title 5); (f) Town of Norton Zoning Bylaw; and
- (g) Town of Norton Wetlands Bylaw, if any.

(h) Town of Norton Stormwater Management Bylaw, Chapter 133 of the Norton General Bylaws.

(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.

B. 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 zoning district and 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 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 and minor alterations that do not increase the floor space of the structure.

C. Special permit uses. The Planning Board may, after a duly advertised public hearing, grant a special permit for a building, structure or use in the floodplain, provided that such building, structure or use is permitted in the underlying zoning district and subject to the following limitations:

- (1) No permit shall be issued to fill or excavate in the floodway or to build a new structure or to substantially improve an existing structure in the floodway;
- (2) In Zones A and AE, the proposed use, including filling or excavating, when combined with all existing uses, shall not increase the water surface elevation of the one-hundred-year flood more than zero inch at any point. This is to be so certified to the Planning Board by a registered professional engineer upon application for the special permit.

D. Other use regulations.

~~(1) Within Zones AH and AO on the FIRM, adequate drainage paths shall be provided around structures on slopes, to guide floodwaters around and away from proposed structures.~~

~~(2) In zones along watercourses that have a regulatory floodway designated on the Bristol County FIRM, encroachments are prohibited in the regulatory floodway which would result in any increase in flood levels within the community during the occurrence of the base flood discharge.~~

(3) (1) All subdivision proposals shall be designed to minimize flood damage, including that all utilities and facilities shall be located and constructed to minimize or eliminate flood damage and that adequate stormwater drainage controls are provided to reduce exposure to flood hazards and so that there, at a minimum, shall be no increase in stormwater runoff when post-construction conditions are compared to pre-construction conditions, using drainage calculations prepared by a licensed professional engineer.

(4) (2) Existing contour intervals of site and elevations of existing structures shall be included on the plans provided.

(5) (3) There shall be established a "routing procedure" which shall circulate or transmit one copy of the development plan to the Conservation Commission, Planning Board, Board of Health and Building Inspector and for comments which shall be considered by the appropriate permitting board prior to issuing applicable permits.

(6) (4) Base flood elevation data. Base flood elevation data is required for subdivision proposals or other developments greater than five lots or five acres within unnumbered A Zones.

(7) (5) In all special flood hazard areas it shall be the responsibility of the owner or builder to notify in writing prospective owners of the floodplain designation and the availability of flood insurance.

E. Procedures in case of noncompliance.

(1) In case of a zoning violation, the administration and enforcement of bylaws, including violations and penalties, shall be as dictated in ARTICLE XI of the Norton Zoning Bylaws, and overseen by the Building Commissioner.

(2) If a zoning violation occurs, the Building Commissioner is to dictate the best avenue for remediation to ensure maximum compliance given the circumstances.

(a) Violators will be required to meet all FEMA standards, NFIP regulations, provide elevation certificates, and may be required to provide temporary elevation certificates at the discretion of the Building Commissioner.

(b) Violators will be required to meet all other applicable state and local regulations.

(3) If the applicant has a grievance with the Decision, they may appeal the Building Commissioner's Decision to the Zoning Board of Appeals as per § 175-10.8 of the Norton Zoning Bylaws. If the grievance is related to a structure, applicants may appeal to the Building Codes Appeal Board (BCAB).

§175-13.5 Abrogation. The floodplain management regulations found in this Floodplain Overlay District section shall take precedence over any less restrictive conflicting local laws, ordinances or codes.

§175-13.6 Disclaimer of Liability. The degree of flood protection required by this bylaw is considered reasonable but does not imply total flood protection.

§175-13.7 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.

§175-13.8 Designation of community Floodplain Administrator. The Town of Norton hereby designates the position of ~~Conservation Director~~ **Building Commissioner** to be the official floodplain ~~administrator~~ **and NFIP administrator** for the Town.

§175-13.9 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:

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

§175-13.10 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.

1. 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.

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

§175-13.11 Variances to local zoning bylaws. 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 nonfinancial 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.

§175-13.12 Permit requirements. The Town of Norton 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.

§175-13.13 Permit review process. The Town of Norton'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.

~~**§175-13.14 Subdivision proposals.** All subdivision proposals and development proposals in the floodplain overlay district shall be reviewed to assure that:~~

- ~~1. Such proposals minimize flood damage.~~
- ~~2. Public utilities and facilities are located & constructed so as to minimize flood damage.~~
- ~~3. Adequate drainage is provided.~~

~~**§175-13.1514 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.~~

§175-13.1614 Unnumbered A zones. In A Zones, in the absence of FEMA BFE data and floodway data, ~~the building department will review and reasonably utilize~~ **the applicant will provide, and the Town staff will subsequently review.** 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.

§175-13.1715 Floodway encroachment.

1. 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.

2. 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.

~~2. In Zones A1-30 and AE, along watercourses that have a regulatory floodway designated on the Town's FIRM encroachments are prohibited in the regulatory floodway which would result in any increase in flood levels within the community during the occurrence of the base flood discharge.~~

~~3. The Town of Norton prohibits encroachments, 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.~~

§175-13.1816 Watercourse alterations or relocations in riverine areas. In a riverine situation, the ~~Conservation Agent~~ **NFIP Administrator** shall notify the following of any alteration or relocation of a watercourse:

1. Adjacent Communities, especially upstream and downstream
2. Bordering States, if affected
3. NFIP State Coordinator

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

4. NFIP Program Specialist

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

~~**§175-13.19 AO and AH zones drainage requirements.** 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.~~

§175-13.2017 Recreational vehicles. In A ~~1-30, AH, and~~ 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.

§175-13.2118 Local enforcement. The ~~Conservation Director~~ **NFIP Administrator** is the assigned Town official responsible for all local enforcement procedures for non-compliant floodplain development.