

**TOWN OF WARWICK
DRAFT FLOODPLAIN OVERLAY DISTRICT BYLAW**

SECTION ____ : FLOODPLAIN OVERLAY DISTRICT

A. STATEMENT OF 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 could disrupt or shut down the utility network and impact regions of the community beyond the site of flooding;
5. Reduce 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 Floodplain District includes all special flood hazard areas designated on the Warwick Flood Hazard Boundary Map (FHBP; an official map of a community issued by FEMA where the boundaries of the flood and related erosion areas having special hazards have been designated as Zone A or E) issued by the Federal Emergency Management Agency (FEMA) for the administration of the NFIP dated January 24, 1975 as Zone A, which indicates the 100-year regulatory floodplain. The FHBP is incorporated herein by reference and is on file with the Town Clerk, Zoning Board of Appeals, Planning Board, Building Inspector, and Conservation Commission.
2. Floodway Data: In Zone A, 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 3 lots or 6 acres, where a portion of the development activity would be located within Zone A.

4. High and Significant Hazard Potential Dam Inundation Areas: Mapping of High and Significant Hazard Dam Inundation Areas is required for subdivision proposals or other developments greater than 3 lots or 6 acres, where a portion of the development activity would be located within Zone A.

C. DEFINITIONS

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 (also known as the “100-year flood”). The area is designated as Zone A.

BASE FLOOD means the flood having a one percent chance of being equaled or exceeded in any given year (also known as the “100-year flood”).

BASE FLOOD ELEVATION (BFE) means the topographical contour line showing the water surface elevation (in whole feet) of the base or 100-year flood.

DAM BREACH INUNDATION AREA means the area that may be inundated if a dam would be breached or would fail.

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.

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.

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.

HIGH HAZARD POTENTIAL DAM refers to dams located where failure will likely cause loss of life and serious damage to home(s), industrial or commercial facilities, important public utilities, main highway(s) or railroad(s).

MOBILE HOME means a structure built on a chassis, usually containing electrical, plumbing and sanitary facilities, designed to be installed on a temporary or a permanent foundation for use as a dwelling or for any other permanent purpose, and **MOBILE HOME PARK** means a lot, or a series of adjoining and connected lots, upon which more than two mobile homes are located, regardless of whether or not a charge is made for such accommodations.

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 (Flood Insurance Rate Map; 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) or after December 31, 1974, whichever is later.

RIVER means a natural flowing body of water that empties to any ocean, lake, or other river.

SIGNIFICANT HAZARD POTENTIAL DAM refers to dams located where failure may cause loss of life and damage home(s), industrial or commercial facilities, secondary highway(s) or railroad(s) or cause interruption of use or service of relatively important facilities.

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 mobile 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 mobile home on foundation. For the latter purpose, the term includes a building 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 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.

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 as outlined in the State Building Code.

D. NOTIFICATION OF WATERCOURSE ALTERATION

The Warwick Building Inspector shall notify the following of any alteration or relocation of a river, due to other than natural causes:

- Adjacent Downstream Communities
- Bordering Downstream 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

E. 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:

- Section of the Massachusetts State Building Code which addresses floodplain hazard areas (currently 780 CMR 120.G, "Flood Resistant Construction");
- 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).

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.

2. 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, etc.
- b. Forestry and nursery uses.
- c. Outdoor recreational uses, including fishing, boating, play areas, 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.

3. Prohibited Uses

- a. No altering, dumping, filling, or removal of riverine (relating to or resembling a river, or located beside a river) 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 Floodplain District.
- c. Commercial or industrial uses are prohibited in the Floodplain District.
- d. Mobile homes placed on a site for longer than 6 months and mobile home parks are prohibited in the Floodplain District, except as provided in Section 5 of the Zoning Bylaws.
- e. Storage of vehicles or equipment within the floodway is prohibited. The Zoning Board of Appeals may consider whether a variance from this prohibition is warranted, where a hardship exists due to lot size or configuration.
- 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 Floodplain District is prohibited.
- h. Storage or processing of hazardous materials (products, wastes, or combination of substances which because of their quantity, concentration, or physical, chemical, toxic, radioactive, or infectious characteristics may reasonably pose a significant, actual, or potential hazard to human health, safety, welfare, or the environment when improperly treated, stored, transported, used, disposed or otherwise managed. Hazardous materials include, without limitation, synthetic organic chemicals, petroleum products, heavy metals, radioactive or infectious materials, and all substances defined as “toxic” or “hazardous under M.G.L. Chapters 21C and 21E, using the Massachusetts Oil and Hazardous Substance List (310 CMR 40.0000). The definition may also include acids and alkalis, solvents, thinners, and pesticides) is prohibited.
- i. Residential subdivision structures, except drinking water supply structures and appurtenances, are prohibited.
- j. All other uses not specifically permitted—or allowed by Site Plan Review (Section 10 of the Zoning Bylaws) or by Special Permit (Section 2C of the Zoning Bylaws)—within the underlying zoning district are prohibited.

4. Restricted Uses

- a. All forest cutting shall require the filing of a Forest Cutting Plan in accordance with the Massachusetts Forest Cutting Practices Act (M.G.L. Ch. 132, Sections 40-46).
- b. Any cutting of more than 10 cords or 5 thousand board feet in a floodplain shall require a Forest Cutting Plan pursuant to the requirements of the Forest Cutting Practices Act and Regulations (M.G.L. Chapter 132, Sections 40 to 46 and 304 CMR) without exception. The provisions of 304 CMR 11.05 that the cut shall not exceed 50% of the basal area uniformly distributed over the area and the area shall not be cut again for at

least 5 years shall apply to any cutting done in the floodplain. Skid roads shall be laid out perpendicular to the stream whenever possible to reduce channelization of flood waters and to slow down the flow of flood waters.

c. 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. This provision is subject to a waiver by the Agricultural Commission where the grazing activity will be low density with minimal runoff potential.

5. Uses 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 Zoning Board of Appeals.

b. The following uses may be allowed by Special Permit in accordance with the Special Permit regulations of this Zoning Bylaw, and additional restriction and criteria contained herein:

- i. A single family residence, duplex, or apartment Residential accessory uses including garages, driveways, private roads, utility rights-of-way and on-site waste-water disposal systems.
- ii. Mobile homes for not more than six months in a calendar year.
- iii. Animal feedlots (confined, fenced areas designed for intensive feeding of livestock), in conformance with Best Management Practices established by the Natural Resource Conservation Service (NRCS).
- iv. Aquaculture, in conformance with Best Management Practices established by the Natural Resource Conservation Service (NRCS).

6. Special Permit Regulations and Procedures

a. The following Special Permit Regulations apply in the Floodplain District:

- i. Within Zone A, where base flood elevation is not provided on the FHBM, 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 sediment 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 as 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 Zoning Board of Appeals 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 five (5) copies of the application by the Town Clerk the Zoning Board of Appeals shall transmit one copy of the development plan to the Conservation Commission, one to the Board of Health, one to the Planning Board, and one to the Building Inspector. Final action shall not be taken by the Zoning Board of Appeals until reports have been received from the above Boards or until thirty-five (35) days have elapsed from the date of transmission from the Town Clerk. Failure to respond or provide comments within 35 days shall be deemed to constitute no objection to the application.
- ix. Existing and proposed contour intervals of 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 and Dam Breach Inundation Areas.
- x. All plans submitted for development in the Floodplain District and Dam Breach Inundation Areas 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 2D of the Warwick Zoning Bylaws, in order to issue a Special Permit, the Zoning Board of Appeals 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.
- 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. Be located outside of the Inundation Areas of any High and Significant Hazard Potential Dams in the region.
- viii. Not result in erosion or sedimentation.
- ix. Not result in water pollution.
- x. Not result in increased runoff on site or onto abutting properties.

7. Nonconforming Uses

- a. Any lawful use, building, structures, premises, land or parts thereof existing at the effective date of this Bylaw/Ordinance or amendments thereof and not in conformance with the provisions of this bylaw/ordinance shall be considered to be a nonconforming use. Any existing use or structure may continue and may be maintained, repaired, and improved.
- b. Preexisting nonconforming structures or uses may be changed, extended or altered, provided that no such change, extension or alteration shall be permitted unless the Zoning Board of Appeals finds that such a change, extension or alteration shall not be substantially more detrimental to the neighborhood than the existing nonconforming use and provided that all applicable requirements of Section 6 of Chapter 40A of the Massachusetts General Laws are satisfied.

F. ENFORCEMENT AND PENALTIES

1. 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.

2. Notice of Violation

When the Building Inspector determines that an activity is not being carried out in accordance with the requirements of this bylaw, the Building Inspector shall issue a written notice of violation to the owner of the property. The notice of violation shall contain:

- a. the name and address of the owner, applicant; and violator,
- b. the address when available or the description of the building, structure, or land upon which the violation is occurring;
- c. a statement specifying the nature of the violation;
- d. a description of the remedial measures necessary to bring the activity into compliance with this bylaw and a time schedule for the completion of such remedial action;

- e. a statement of the penalty or penalties that shall or may be assessed against the person to whom the notice of violation is directed;
- f. 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.

3. Stop Work Orders

Persons receiving a notice of violation from the Building Inspector will be required to halt all construction activities. This “stop work order” will be in effect until the Building Inspector confirms that the development activity is in compliance and the violation has been satisfactorily addressed. Failure to address a notice of violation in a timely manner can result in civil, criminal, or monetary penalties in accordance with the enforcement measures authorized in this bylaw.

4. Criminal and Civil Penalties

Any person who violates any provision of this ordinance, valid regulation, or the terms or conditions in any permit or order prescribed or issued thereunder, shall be subject to a fine not to exceed \$100 for each day such violation occurs or continues or subject to a civil penalty of up to \$100 per day for each violation, which may be assessed in an action brought on behalf of the Town in any court of competent jurisdiction.

5. Non-Criminal Disposition

As an alternative to criminal prosecution or civil action, the Town of Warwick may elect to utilize the non-criminal disposition procedure set forth in the town bylaws. The Building Inspector shall be the enforcing entity. The penalty for the 1st violation shall be up to \$50. The penalty for the 2nd violation shall be up to \$75. The penalty for the 3rd and subsequent violations shall be \$100. Each day or part thereof that such violation occurs or continues shall constitute a separate offense.

6. 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 Warwick may take necessary corrective action at the owner’s expense, the cost for which may be added as a betterment to the property tax bill and a lien placed on the property until the debt is discharged.

G. SEVERABILITY

The invalidity of any section or provision of this bylaw/ordinance shall not invalidate any other section or provision thereof.