## SECTION 5.2.09 FLOOD PLAIN DISTRICT (formerly 5.2.04)

***[Amended @ ATM 5-7-2008, 5-2-2023]***

**I. PURPOSE**

**A.** The purpose of the Flood plain District is to:

**1.** Ensure public Safety through reducing the threats to life and personal injury.

**2.** Eliminate new hazards to emergency response officials.

**3.** Prevent the occurrence of public emergencies resulting from water quality, contamination, and pollution due to flooding.

**4.** Avoid the loss of utility service 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.

**II. DEFINITIONS**

Where not expressly defined in the Zoning Bylaws, terms used in this section shall be interpreted as defined below:

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

**DEVELOPMENT:** 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. [US Code of Federal Regulations, Title 44, Part 59].

**FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA):** administers the National Flood Insurance Program (NFIP). 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 INSURANCE RATE MAP (FIRM):**  an official map of a community in which FEMA has delineated both the areas of special flood hazard and the risk premium zones applicable to the community.

**FLOOD INSURANCE STUDY:**  and 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:** the channel of the river, creek, or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height. [Base Code, Chapter 2, Section 202].

**FUNCTIONALLY DEPENDENT USE:** a use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, but does not include long-term storage or related manufacturing facilities. [US Code of Federal Regulations, Title 44, Part 59] Also [Referenced Standard ASCE 24-14]

**HIGHEST ADJACENT GRADE:** the highestnatural 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:** 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:
5. By an approved state program as determined by the Secretary of the Interior or
6. Directly by the Secretary of the Interior in states without approved programs.

[US Code of Federal Regulations, Title 44, Part 59]

**NEW CONSTRUCTION:** Structures for which the start of construction commenced on or after the effective date of the first floodplain management code, regulation, ordinance, or standard adopted by the authority having jurisdiction, including any subsequent improvements to such structures. *New construction includes work determined to be substantial improvement.* [Referenced Standard ASCE 24-14]

**RECREATIONAL VEHICLE**: a vehicle which is:

1. Built on 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.

[US Code of Federal Regulations, Title 44, Part 59]

**REGULATORY FLOODWAY:** see FLOODWAY.

**SPECIAL FLOOD HAZARD AREA:** the land area subject to flood hazards and shown on a Flood Insurance Rate Map or other flood hazard map as Zone A, AE, A1-30, A99, AR, AO, 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:** 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:** 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:** 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 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. [As amended by MA in 9th Edition BC]

**VARIANCE:** a grant of relief by a community from the terms of a floodplain management regulation. [US Code of Federal Regulations, Title 44, Part 59]

**VIOLATION:** the failure of a structure or other development to be fully compliant with the community's floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in §60.3 is presumed to be in violation until such time as that documentation is provided. [US Code of Federal Regulations, Title 44, Part 59]

**III. FLOOD PLAIN DISTRICT**

1. **The Floodplain District** is herein established as an overlay district. The district includes all special flood hazard areas within the Town of Leicester designated as Zones A and AE, on the Worcester County Flood Insurance Rate Map (FIRM), dated June 21, 2023 issued by the Federal Emergency Management Agency (FEMA) for the administration of the National Flood Insurance Program. The exact boundaries of the Flood Plain District may be defined by the 100-year base flood elevations shown on the FIRM and further defined by the Worcester County Flood Insurance Study (FIS) report dated June 21, 2023. The FIRM and FIS report are incorporated herein by reference and are on file with the Town Clerk and the Department of Development and Inspectional Services.

The Floodplain District is established as an overlay district to all other districts. All development, including structural and non-structural activities, whether permitted by right or by special permit must be in compliance with MGL c. 131, § 40 and with the requirements of Massachusetts State Building Code, 780 CMR as well as the Department of Environmental Protection Regulations, 310 CMR.

1. **Permits Required.** A permit is required for all proposed construction or development in the Floodplain District, including new construction or changes to existing buildings, placement of manufactured homes, placement of agricultural facilities, fences, sheds, storage facilities or drilling, mining, paving and any other development that might increase flooding or adversely impact flood risks to other properties.
2. **Designation of a Community Floodplain Administrator.** The Town of Leicester herby designates the position of Building Commissioner to be the official floodplain administrator for the Town.
3. **Permit Review Process.** Leicester’s permit review process includes the use of a Floodplain Development Review Form in addition to the traditional building permit. The proponent must acquire all necessary local, state, and federal permits, and must submit the completed checklist demonstrating that all necessary permits have been acquired.
4. **Variances to Building Code Floodplain Standards.** 
   1. 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.
   2. 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:
      1. The issuance of a variance to construct a structure below the base flood level may result in increased premium rates for flood insurance up to amounts as high as $25 for $100 of insurance coverage; and
      2. Such construction below the base flood level increases risks to life and property.
   3. Such notification shall be maintained with the record of all variance actions for the referenced development in the floodplain overlay district.
5. **Variances to** **local Zoning Bylaws related to community compliance with the National Flood Insurance Program (NFIP).** Variance from these floodplain bylaws must meet the requirements set out by State law, and may only be granted if:
6. Good and sufficient cause and exceptional non-financial hardship exist.
7. the variance will not result in additional threats to public safety, extraordinary public expense, or fraud or victimization of the public; and
8. the variance is the minimum action necessary to afford relief.
9. **Unnumbered A Zones**. In the absence of FEMA BFE data and floodway data, the applicant shall obtain any existing flood elevation and floodway data available from a federal, state, or other source, to be reviewed by the Building Commissioner and utilized to determine compliance with this bylaw and the State Building Code.
10. **Floodway Encroachment.** In Zones A and AE, along watercourses that have not had a regulatory floodway designated, the best available federal, state, local, or other floodway data shall be used 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.

1. **Subdivision Proposals.** Subdivision proposals shall be reviewed to assure that:
   1. Such proposals minimize flood damage.
   2. Public utilities and facilities are located and constructed so as to minimize flood damage.
   3. Adequate drainage is provided.
2. **Base Flood Elevation Data for Subdivision Proposals.** Base flood elevation data is required for subdivision proposals or other developments greater than 50 lots or five acres, whichever is less. Where there are not already base flood elevations (BFEs) for each parcel, then the developer must provide BFEs for each parcel so that flood-resistant standards can be appropriately applied.
3. **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.
4. **Recreational Vehicles.** In A1-30, AH, 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.
5. **Watercourse Alterations or Relocations in Riverine Areas.** In a riverine situation, the following parties shall be notified of any alteration or relocation of a watercourse:

* Adjacent communities
* Bordering states (possibly)
* NFIP State Coordinator, Massachusetts Department of Conservation and Recreation
* NFIP Program Specialist, Federal Emergency Management Agency, Region I

1. **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 six 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

1. **Abrogation and greater restrictions.** The floodplain management regulations found in this Floodplain 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 is deemed to be unconstitutional or invalid by a court, the remainder of the bylaw shall be effective.