

# BYLAW COMPARRISON NOTES

Wednesday, May 3, 2023 3:43 PM

## **THINGS TO CONSIDER**

Holland has been a FEMA FLOOD INSURANCE community in good standing since 1975

Holland has periodically updated their bylaws to reflect FEMA changes as recently as 1991 as evidenced in the current Bylaw entry

FEMA's community flood designations are NOT dependent on a community's participation in the Flood Insurance Program

That means, State and Federal laws/Regulations that reference FEMA flood designations stand and are enforceable no matter the community's status with the Flood Insurance program.

## **BYLAW EDIT COMPARISONS:**

Both establish a Floodplain Overlay District as per FEMA Regulations

Existing version makes references to same concepts and components as proposed revisions but in loosely and vague terms. Revisions clarify.

## **FEMA REVISION**

- Explains the purpose of the Overlay District
- Defines key concepts that apply specifically to the language used in the section
- Designates a FEMA Floodplain Administrator
- Clearly spells out supremacy over lesser measures
- Details Variance and Permitting procedures
- Speaks to the relevant and current FEMA MAPS and Effective dates.
- Adds Violation and Enforcement Clauses which were required as before but not included in previous versions of Bylaw

## 6.1 FLOOD PLAIN **OVERLAY** DISTRICT

6.1.1 THE FLOODPLAIN DISTRICT is herein established as an overlay district. The District includes all special flood hazard areas within the Town of Holland designated as Zone A or AE on the Hampden 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 Hampden County FIRM that are wholly or partially within the Town of Holland are panel numbers 25013C0479E, 25013C0483E, 25013C0484E, 25013C0487E, 25013C0490E, 25013C0491E, 25013C0492E, and 25013C0495E dated July 16, 2013. 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 Hampden County Flood Insurance Study (FIS) report dated July 16, 2013. The FIRM and FIS report are incorporated herein by reference and are on file with the Town Clerk, Planning Board, and Building Inspector.

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:

- Sections of the Massachusetts State Building Code (780 CMR) which address floodplain and coastal high hazard areas;
- Wetlands Protection Regulations, Department of Environmental Protection (DEP) (currently 310 CMR 10.00);
- Inland Wetlands Restriction, DEP (currently 310 CMR 13.00);
- 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.

In Zone A the permit granting authorities shall obtain, review and reasonably utilize the best available floodway data to prohibit encroachments in floodway which would result in any increase in the base flood discharge. In Zones A and AE along watercourses within the Town of Holland that have not had a regulatory floodway designated on the Hampden County FIRMs, no new construction, substantial improvement, or other development shall be permitted unless it is demonstrated that the cumulative effect of the proposed development when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community.

6.1.2 IN THE FLOODWAY designated on the Flood Insurance Rate Maps the following provisions shall apply:

- a. All encroachments, including fill, new construction, substantial improvements to existing structures, and other development are prohibited unless certification by a registered professional engineer or architect 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.
- b. Any encroachment meeting the above standard shall comply with the flood plain requirements of the State Building Code.
- c. 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.

6.1.3 SUBDIVISION STANDARD FOR THE FLOOD PLAIN DISTRICT - All subdivision proposals and other proposed new developments shall be reviewed to determine whether such proposals will be reasonably safe from flooding. If any part of a subdivision proposal or other new development is located within the Flood Plain District established under the zoning bylaw it shall be reviewed to insure that:

- a. The proposal is designed consistent with the need to minimize flood damage, and
- b. All public utilities and facilities, such as sewer, gas, electrical and water systems shall be located and constructed to minimize or eliminate flood damage, and
- c. Adequate drainage systems shall be provided to reduce exposure to flood hazards, and
- d. Base flood elevation (the level of the 100 year flood) data shall be provided for proposals greater than 50 lots or five acres, whichever is the lesser, for that portion within the Flood Plain District.

6.1.4 HEALTH REGULATIONS PERTAINING TO THE FLOOD PLAIN DISTRICT - The Board of Health, in reviewing all proposed water and sewer facilities to be located in the Flood Plain District established under the zoning bylaw, shall require that:

- a. New and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system, and
- b. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the system and discharges from the

systems into the flood waters.

6.1.5 The following regulations were adopted at the June 25, 1991 Town Meeting "in order to make the Town of Holland's Flood Plain District Regulation compliant with Section 60.3(d) of the National Flood Insurance Program Regulations":

- a. All necessary permits shall be obtained from those Federal, State and local government agencies from which prior approval is required by Federal or State law, including but not limited to Section 404 of the Federal Water Pollution Control Act Amendment of 1972, 33 U. S. c. 1334.
- b. Prior to the alteration or relocation of any watercourses, adjacent communities and the following agencies will be notified:
  - NFIP State Coordinator,  
Massachusetts Department of Conservation and Recreation;
  - NFIP Program Specialist,  
Federal Emergency Management Agency, Region 1.
- c. The flood carrying capacity within an altered or relocated watercourse shall be maintained.

# FEMA EDITED CONTENT FOR COMPARISON

Saturday, January 28, 2023 11:24 AM

## 6.1 Floodplain Overlay District.

### 6.1.1 Establishment

- The Floodplain District is herein established as an overlay district.
- The purpose of the Floodplain Overlay 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 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

### 6.1.2 Definitions

As used in this chapter, the following terms shall have the meanings indicated:

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

**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** - 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]

**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:

- i. 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;
- ii. 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;
- iii. 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
- iv. 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]

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 - means a vehicle which is:

- i. Built on a single chassis;
- ii. 400 square feet or less when measured at the largest horizontal projection;
- iii. Designed to be self-propelled or permanently towable by a light duty truck; and
- iv. 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 - 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 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 is presumed to be in violation until such time as that documentation is provided. [US Code of Federal Regulations, Title 44, Part 59]

#### 6.1.3 Designation of community Floodplain Administrator:

The Town hereby designates the position of **BUILDING COMMISSIONER** to be the official Floodplain Administrator

#### 6.1.4 The floodplain management regulations found in this Floodplain Overlay District section shall take precedence over any Less restrictive conflicting local laws, ordinances or codes. Permitted uses must also meet, at minimum, the Massachusetts State Building Code dealing with construction in floodplains.

#### 6.1.5 Disclaimer of liability

The degree of flood protection required by this bylaw is considered reasonable but does not imply total flood protection.

#### 6.1.6 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.

#### 6.1.7 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

#### 6.1.8 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 **FLOODPLAIN ADMINISTRATOR** 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.

#### 6.1.9 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:

- i. Good and sufficient cause and exceptional non-financial hardship exist;
- ii. the variance will not result in additional threats to public safety, extraordinary public expense, or fraud or victimization of the public; and
- iii. the variance is the minimum action necessary to afford relief.

#### 6.1.10 The District includes all special flood hazard areas within Holland designated as Zone A, AE, AH, AO, or A99 on the Hampden County Flood Insurance Rate Map (FIRM) dated June 7, 2023 issued by the Federal Emergency Management Agency (FEMA) 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 Hampden County Flood Insurance Study (FIS) report dated June 7, 2023. The FIRM and FIS report are incorporated herein by reference and are on file with the Town Clerk, Planning Board, and Building Commissioner.

#### 6.1.11 Permits are required for all proposed development in the Floodplain Overlay District

A permit is required 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.

#### 6.1.12 Unnumbered A Zones

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.

#### 6.1.13 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.

- 6.1.14 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.
- 6.1.15 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.
- 6.1.16 In Zones A1-30 and AE, along watercourses that have a regulatory floodway designated on the Town's FIRM encroachments the following additional provisions shall apply:
- i. All encroachments, including fill, new construction, substantial improvements to existing structures, and other development are prohibited unless certification by a registered professional engineer or architect is provided by the applicant demonstrating that such encroachment shall not result in any increase in flood levels during the occurrence of the one-hundred-year flood.
  - ii. Any encroachment meeting the above standard shall also comply with the floodplain requirements of the State Building Code.
- 6.1.17 Subdivision standard for the Floodplain District.  
All subdivision proposals and other proposed new developments shall be reviewed to determine whether such proposals will be reasonably safe from flooding. If any part of a subdivision proposal or other new development is located within the Floodplain District established under the zoning bylaw it shall be reviewed to insure that:
- i. The proposal is designed consistent with the need to minimize flood damage, and
  - ii. All public utilities and facilities, such as sewer, gas, electrical and water systems shall be located and constructed to minimize or eliminate flood damage, and
  - iii. Adequate drainage systems shall be provided to reduce exposure to flood hazards, and
  - iv. 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.
- 6.1.18 Health regulations pertaining to the floodplain district. The Board of Health, in reviewing all proposed water and sewer facilities to be located in the Floodplain District established under the zoning bylaw, shall require that:
- i. New and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system, and
  - ii. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the system and discharges from the systems into the flood waters.
- 6.1.19 All necessary permits shall be obtained from those Federal, State and local government agencies from which prior approval is required by Federal or State law, including but not limited to Section 404 of the Federal Water Pollution Control Act Amendment of 1972, 33 U.S.C. 1334.
- 6.1.20 Prior to the alteration or relocation of any watercourses, the Floodplain Administrator shall notify the following of any alteration or relocation of a watercourse:
- i. Adjacent Communities, especially upstream and downstream
  - ii. Bordering States, if affected
  - iii. NFIP State Coordinator, Massachusetts Department of Conservation and Recreation,
  - iv. NFIP Program Specialist, Federal Emergency Management Agency, Region I
- 6.1.21 The flood carrying capacity within an altered or relocated watercourse shall be maintained.
- 6.1.22 Violations and enforcement.
- i. The PLANNING BOARD, its agents, officers and employees, shall have authority to enter upon privately owned land for the purpose of performing their duties under this chapter and may make such examinations, surveys or sampling as the BOARD deems necessary.
  - ii. The PLANNING BOARD may proceed against any person violating any provision of this chapter, or any decision or regulation of the HCC pursuant to this chapter, by recommending civil and criminal court actions to the Select Board. The authority to involve Town Counsel in civil or criminal court actions shall remain exclusively with the Select Board.
  - iii. Any person who, after being issued an enforcement order, continues to violate this chapter regulations



thereunder or permit issued thereunder, shall be subject to a fine of \$100. Each day such violation continues after notice to the party concerned shall constitute a separate violation subject to a fine of \$100 per day.

- iv. In the alternative to criminal prosecution, the PLANNING BOARD may elect to utilize the noncriminal disposition procedure set forth in G.L. c. 40, § 21D and impose a civil penalty of \$50 for each violation.
- v. The penalty associated with applications filed after work has been started or completed, or as the result of a violation and/or enforcement action, shall be \$300 in addition to all the normally incurred fees.