

SECTION 8.0

Special District Regulations

8.1. Floodplain Overlay District (FPOD). [Amended 5-8-2012 ATM by Art. 7]

8.1.1. Overlay district

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 flood waters

The district includes all special flood hazard areas within the Town of Middleton designated as Zone A, AE, AH, AO, A99, V, or VE on the Essex 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 Essex County FIRM dated July 8, 2025 issued by the Federal Emergency Management Agency (FEMA) for the administration of the National Flood Insurance Program, that are wholly or partially within the Town of Middleton are panel numbers 25009C0243F, 25009C0244F, 25009C0263F, 25009C0381F, 25009C0382F, 25009C0383F, 25009C384F, 25009C0401F, 25009C0402F, and 25009C403F dated July 3, 2012.~~ The exact boundaries of the district may be defined by the ~~one hundred year 1%-chance~~ base flood elevations shown on the FIRM and further defined by the Essex County Flood Insurance Study (FIS) report dated ~~July 3, 2012~~July 8, 2025. The FIRM and FIS report are incorporated herein by reference and are on file with the Town Clerk, Planning Board, and the Building Commissioner and the Conservation Commission. ~~of the Town of Middleton.~~

The Town of Middleton hereby designates the Town Administrator to be the official floodplain administrator for the Town.

8.1.2. Permitted uses

The underlying permitted uses are allowed provided that they meet the following requirements, as well as those of the Massachusetts State Building Code dealing with construction in floodplains. The following uses of low flood damage potential and causing no obstructions to flood flows are encouraged provided they are permitted in the underlying district and 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.

8.1.3. Permitting

The Town of Middleton 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 or paving and any other development that might increase flooding or adversely impact flood risks.

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.

8.1.4. Zone A requirements

1. Within Zone A, where the base flood elevation is not provided on the FIRM, the applicant shall obtain any existing base flood elevation data and it shall be reviewed by the Building Commissioner for its reasonable utilization toward meeting the elevation or floodproofing requirements of the State Building Code, as appropriate. 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 Federal, State or other sources 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.
2. Base flood elevation data is required for subdivision proposals or other developments greater than 50 lots or five acres, whichever is the lesser, within unnumbered A zones.

8.1.5. Floodway requirements

In Zones A, A1-A30, 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-A30 and AE, along watercourses that have a regulatory floodway designated on the 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. In

~~the floodway, designated on the Flood Insurance Rate Map, the following provisions shall apply:~~

- ~~1. All encroachments, including fill, new construction, substantial improvements to existing structures, and other developments, are prohibited 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 one hundred year flood base flood discharge.~~
- ~~2. Any encroachment meeting the above standard shall comply with the floodplain requirements of the State Building Code.~~
- ~~3. 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.~~

8.1.6. Recreational Vehicles

In A, A1-30, AH, AO 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.

8.1.7. Use regulations

1. 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 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 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. All subdivision proposals must be designed to assure that:
 - a. Such proposals minimize flood damage;

- b. All public utilities and facilities are located and constructed to minimize or eliminate flood damage; and
- c. Adequate drainage is provided to reduce exposure to flood hazards.

In a riverine situation, the Middleton Conservation

8.1.8. Watercourse alterations or relocations of riverine areas

In a riverine situation, the Conservation Agent shall notify the following of any alteration or relocation of a water course:

Adjacent communities

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 1
~~99 High Street, 6th Floor~~
~~Boston, MA 02110~~

8.1.9. 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:

NFIP State Coordinator
Massachusetts Department of Conservation and Recreation

NFIP Specialist
Federal Emergency Management Agency, Region 1

8.1.10. 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 hearing related to the variance, and will maintain this record in the community's files.

The Town shall 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 will result in increased premium rates for flood insurance up to amounts as high as

\$25 and \$100 of insurance coverage and (2) 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.

8.1.11. Variances to local Zoning Bylaws related to community compliance with the National Flood Insurance Program (NFIP)

A variance from the floodplain bylaw 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.

8.1.12. Abrogation and greater restriction

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

8.1.13. Disclaimer of liability

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

8.1.14 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.

8.1.15 Floodplain Overlay District (FPOD) definitions.

AREA OF SPECIAL FLOOD HAZARD — 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, VE, or V.

BASE FLOOD — The flood having a one-percent chance of being equaled or exceeded in any given year.

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.

DISTRICT — Floodplain district.

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 — 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 100-year floodway. (For maps done in 1987 and later, the floodway designation is included on the FIRM.)

FLOOD INSURANCE RATE MAP (FIRM) — 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 — 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 — 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 — 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 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:

- a. Listed individually in the National Register of Historic Places (as listing maintained by the Department of the 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:
 - i. By an approved state program as determined by the Secretary of the Interior or
 - ii. Directly by the Secretary of the Interior in States without approved programs.

LOWEST FLOOR — 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.

NEW CONSTRUCTION (FOR FLOODPLAIN MANAGEMENT PURPOSES) — Structures for which the "start of construction" commenced on or after the effective date of the first 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. New construction includes subsequent and substantial improvements to such structures.

ONE-HUNDRED-YEAR FLOOD — See "base flood."

RECREATIONAL VEHICLE — 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 — The land area subject to flood hazards and shown on a Flood Insurance Rate Map or other flood hazard map a Zone A, AE, A1-30, A99, AR, AO, AH, V, VO, VE or V1-30. An area having special flood and/or flood related erosion hazards, and shown on a FHBMR or FIRM as Zone A, AO, A1-30, AE, A99, AH, V, V1-30, VE.

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 shed 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.

STRUCTURE (for floodplain management purposes) — Any construction, erection, assemblage or other combination of materials in a fixed location to give support or shelter A walled and roofed building, including a gas or liquid storage tank that is primarily 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% of the market value of the structure before the damage occurred.

SUBSTANTIAL IMPROVEMENT — Any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds 50% 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.

SUBSTANTIAL REPAIR OF A FOUNDATION — When work or repair to 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 5% 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 a 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 floodplain management regulation.

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.

ZONE A — The one-hundred-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 AE (FOR NEW AND REVISED MAPS) — The one-hundred-year floodplain where the base flood elevation has been determined.

ZONE X — 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.