

ZONING ARTICLE #1 - National Flood Insurance Program Provisions

ARTICLE XX: To see if the Town will vote to amend various sections of the Zoning Bylaw to modify certain provisions related to Flood Zones and Flood Area Provisions, with new language shown in bold italics, as follows, or take any other action relative thereto:

1. Amend Section 201.1 - Classes of Districts, by replacing the text “*Floodplain Zones: VE, AE, AO, X*” with new text “***Floodplain Zones: VE, AE, AO, AH, X***”.
2. Amend Section 201.4 – Floodplain Zones, by replacing the text “*100 year*” with “***1%-chance***” in the second to last sentence, and adding new text as shown:

201.4 – Floodplain Zones. The Floodplain Zones ***are herein established as an overlay District and*** include all special flood hazard areas within the Town of Yarmouth designated as Zone AE, AO, ***AH*** and VE on the Barnstable County Flood Insurance Rate Maps (FIRM) issued by the Federal Emergency Management Agency (FEMA) for the administration of the National Flood Insurance Program (NFIP). The map panels of the Barnstable County FIRM that are wholly or partially within the Town of Yarmouth are panel numbers 25001C0557J, 25001C0559J, 25001C0567J, 25001C0569J, 25009C0576J, 25009C0577J, 25009C0578J, 25009C0579J, 25009C0583J, 25001C0586J, 25001C0587J, 25001C0588J, 25001C0589J, 25001C0591J, 25001C0782J, and 25001C0801J, dated July 16, 2014. The exact boundaries of the District may be defined by the ***1%-chance*** base flood elevations shown on the FIRM and further defined by the Barnstable County Flood Insurance Study (FIS) report dated July 16, 2014. The FIRM and FIS report are incorporated herein by reference and are on file with the Building Division, the Engineering Division, the Planning Division, and the Town Clerk.

3. Amend Section 403 - Flood Area Provisions, by adding a new Section 403.1 – Purpose, at the beginning of the Section as shown:

403.1 Purpose: The purpose of the Flood Area Provisions is to protect the public health, safety, and general welfare, and to minimize the harmful impacts of flooding upon the community by:

- 1. Reducing threats to life and personal injury.***
 - 2. Minimizing new hazards for emergency response officials.***
 - 3. Reducing or preventing damage to public and private property, infrastructure, and utility services caused by flood waters.***
 - 4. Reducing or eliminating costs associated with cleanup and repairs caused by flooding.***
4. Amend Section 403.1 - Development, by replacing the text “*403.1*” with “***403.2***” in the title, and adding new text as shown:

403.2 Development: All applicable development and uses in all Flood Zones A and V, as identified on Federal Emergency Management Agency (***FEMA***) Flood Insurance Rate

Map (FIRM) panels, whether permitted as a matter of right, by special permit, or by variance, shall meet the effective provisions of 780CMR (State Building Code). These maps are on file in the Building Division, the Engineering Division, the Planning Division, and the Town Clerk.

5. Amend Section 403 - Flood Area Provisions, by adding the following new text after Section 403.2 as shown:

403.3 General Provisions:

1. ***Abrogation and Greater Restriction:*** *The floodplain management regulations found in these Flood Area Provisions 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 still be effective.*

403.4 Designation of Community Floodplain Administrator:

The position of Building Commissioner is designated as the official Floodplain Administrator for the Town of Yarmouth.

6. Amend Section 403.2 – Floodway Data, by replacing the text “403.2” with “403.5” in the title.
7. Amend Section 403 - Flood Area Provisions, by adding the following new text after Section 403.5 as shown:

403.6 Unnumbered A Zones:

In A Zones, in the absence of FEMA Base Flood Elevation (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 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.

403.7 Submission of New Technical Data:

If the Town of Yarmouth acquires data that changes the base flood elevation in the FEMA mapped Special Flood Hazard Areas, the Conservation Administrator 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 Department of Conservation and Recreation
251 Causeway Street, Suite 600-700
Boston, MA 02114*

8. Amend Section 403.3 – Notification of Watercourse Alteration, by replacing the text “403.3” with “403.8” in the title.
9. Amend Section 403.4 – Use Regulations, by replacing the text “403.4” with “403.9” in the title; by replacing text “Zone AO” with new text “Zone AO and AH” in Paragraph 1; and replacing the text “Zones VI-30, VE, and V” with new text “Zones VE and V” in Paragraphs 2 & 3.
10. Amend Section 403 - Flood Area Provisions, by adding the following new text after Section 403.9 as shown:

403.10 Recreational Vehicles in a Flood District: In AH, AE Zones, VE, and V Zones, all recreational vehicles to be placed on a site must be:

- 1. fully licensed and highway ready; OR*
- 2. be on the site for less than 180 consecutive days; OR*
- 3. be elevated and anchored in accordance with the flood zone’s regulations for foundation and elevation requirements.*

403.11 Permits Required in Floodplain Districts:

- 1. Under separate processes, the Town of Yarmouth requires Building and/or Conservation permit or permits for all proposed construction or other development in the floodplain overlay districts, including new construction or changes to existing buildings, placement of manufactured homes, placement of agricultural facilities, filling and grading, 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. The Town of Yarmouth requires project proponents to acquire all local, state and federal permits necessary for development in the floodplain overlay district, and certify that all necessary permits have been, or will be acquired prior to start of construction.*

403.12 Variances to Building Code Floodplain Standards:

- 1. Variances to the flood-resistant standards as found in the MA State Building Code may only be issued by the MA State Building Code Appeals Board.***
- 2. For issued Variances, the Town of Yarmouth will request from the MA State Building Code Appeals Board 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.***
- 3. 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 stating 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.***
- 4. Such notification shall be maintained with the record of all variance actions for the referenced development in the floodplain overlay district.***

404.13 Variances from Section 403:

A variance from these floodplain bylaws must meet the requirements set out by State law, meet the Variance criteria per Section 102.2.2, and may only be granted if:

- 1. good and sufficient cause and exceptional non-financial hardship exists; and***
- 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; and***
- 4. any required or applicable variances from the MA State Building Code Appeals Board have been obtained.***

403.14 Flood District Definitions: *The following Definitions apply specifically to these Flood Area Provisions and the Floodplain Zones.*

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 means 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:

- (a) 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;
- (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:
 - (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:

- (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.

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

REGULATORY FLOODWAY - see FLOODWAY.

SPECIAL FLOOD HAZARD AREA means the land area subject to flood hazards and shown on a Flood Insurance Rate Map or other flood hazard map as Zone A, AE, AI-30, A99, AR, AO, AH, V, VO, VE or VI-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(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. [US Code of Federal Regulations, Title 44, Part 59]

Explanation: This Article includes amendments related to development within Flood Zones and are necessary to maintain the Town’s eligibility in the National Flood Insurance Program (NFIP). This program is managed by the Federal Emergency Management Agency (FEMA) and enables homeowners, businesses and renters in participating communities to purchase federally backed flood insurance. Flood insurance is required for anyone with a bank mortgage backed by the federal government, such as through Fannie Mae or Freddie Mac. With 1,100 active flood insurance policies in the Town of Yarmouth, maintaining eligibility in the NFIP is critical for our community.

Requires 2/3rds Vote

Selectmen Recommend (X-X)

Finance Committee (X-X)

(Planning Board)