



MEETING DATE: December 19, 2022

ORDER OF THE TOWN COUNCIL

To adopt the revisions to Zoning Bylaws Article 2, Zoning Districts and, Article 3, Use Regulations, by deleting the language shown in ~~red strikethrough font~~ and adding the language in ***bold italic font***, as shown on pages 25-26 of the Motion Sheet [attached] and a new Article 16, FEMA Floodplain Overlay District, as shown on pages 27-34 of the Motion Sheet [attached], effective February 9, 2023.

I hereby certify that at a regular meeting of the Town Council for which a quorum was present, the above action was approved by a vote of twelve (12) for, zero (0) against, - - - present, and one (1) absent, on December 19, 2022.

Yea: De Angelis, Devlin Gauthier, Griesemer, Hanneke, Lopes, Miller, Pam, Rooney, Schoen, Steinberg, Taub, Walker

Nay: None

Present: - - -

Absent: Bahl-Milne

Attest:

Athena O'Keeffe, Clerk of the Town Council

ARTICLE 2 ZONING DISTRICTS

To see if the Town will amend Article 2, Section 2.0, Subsection 2.05, Resource Protection Districts, of the Zoning Bylaw by adding the language in ***bold italics***, as follows:

FEMA Floodplain Overlay District

The FEMA Floodplain Overlay District is an overlay district intended to provide protection of, and regulation of activities in, the special flood hazard areas designated on the Town of Amherst's Flood Insurance Rate Maps (FIRM) issued by the Federal Emergency Management Agency for the administration of the National Flood Insurance Program, the exact boundaries of which are defined by the 1% chance base flood elevations shown on the FIRM and further defined by the Flood Insurance Study (FIS), and shown on the Official Zoning Map for the Town of Amherst, entitled "Official Zoning Map, Amherst, Massachusetts, May 2011", as amended.

ARTICLE 3 USE REGULATIONS

To see if the Town will amend Article 3, Section 3.13 and 3.22 of the Zoning Bylaw by adding the language in ***bold italics*** and deleting the language shown in ~~red strikethrough~~, as follows:

3.13 Development in Floodways

All encroachments including fill, new construction, substantial improvements to existing structures and other developments are prohibited in the floodway, unless certification is provided demonstrating that such encroachment will not result in any increase in flood levels during the occurrence of a 100-year flood. Such certification shall be provided by a registered professional engineer or any other person, who, in the opinion of the Planning Board, is qualified to make such determination. Floodways are shown on the ~~Floodway and Flood Boundary Map~~ ***Flood Insurance Rate Maps (FIRMs)***, as amended, produced by the Federal Emergency Management Agency. This section shall not supersede any of the requirements of the Flood Prone-Conservancy District. ***See also Article 16, FEMA Floodplain Overlay District.***

3.22 Flood Prone - Conservancy (FPC) District

3.220 This section does not authorize any person to trespass, infringe upon or injure the property of another, and it does not excuse any person of the necessity of complying with other sections of this Bylaw or other applicable laws, regulations and bylaws. ***The floodplain management regulations found in Article 16, FEMA Floodplain Overlay District, shall take precedence over any less restrictive conflicting provision of this section of bylaw or other local bylaw, regulation, or code.***

ARTICLE 16 FEMA FLOODPLAIN OVERLAY DISTRICT

SECTION 16.0 INTENT & PURPOSE

The FEMA Floodplain Overlay District is herein established as an overlay district. The FEMA Floodplain Overlay District includes all special flood hazard areas designated on the Town of Amherst's Flood Insurance Rate Maps (FIRM) issued by the Federal Emergency Management Agency (FEMA) for the administration of the National Flood Insurance Program, dated February 9, 2023. These maps indicate the 1%-chance regulatory floodplain. The exact boundaries of the FEMA Floodplain Overlay District shall be defined by the 1%-chance base flood elevations shown on the FIRM and further defined by the Flood Insurance Study (FIS) report dated February 9, 2023. The effective FIRM and FIS report are incorporated herein by reference and are on file with the Town Clerk, Inspection Services, Conservation Department, and Planning Department.

The purpose of the floodplain management regulations is to protect the public health, safety, and general welfare and to minimize the harmful impacts of flooding upon the community. More specifically, the purpose of the FEMA Floodplain Overlay District is to:

- 16.00 Ensure public safety through reducing the threats to life and personal injury;*
- 16.01 Eliminate new hazards to emergency response officials;*
- 16.02 Prevent the occurrence of public emergencies, contamination and pollution of water resources resulting from flooding, so as to protect public safety and avoid damage to wildlife habitat;*
- 16.03 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;*
- 16.04 Eliminate costs associated with the response and cleanup of flooding conditions;*
- 16.05 Reduce damage to public and private property resulting from flooding waters; and*
- 16.06 Allow the floodplain to operate naturally and drain flood waters without development that can add to flooding.*

SECTION 16.1 DEFINITIONS

The following definitions comply with FEMA Region 1 standards and shall apply only within the FEMA Floodplain Overlay District. The definitions are based on State Building Code, standard references found in the State Building Code (i.e. ASCE 24), and FEMA regulations found in the Code of Federal Regulations.

“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 or storage of equipment or materials.

“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 the 100-year floodway.

“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 elevation shown on the approved FIRM maps.

“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.

“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 (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.***

“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.

“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;***
- d) Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use; and***
- e) Fully licensed and highway ready such that the wheels must be inflated; have no attached deck, porch or shed; and have quick-disconnect sewage, water and electrical connections. The vehicle must be ready to relocate immediately upon notification of the possibility of flooding in the area.***

“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, or AH.

“Start of Construction” – The date of issuance of a building permit for new construction and/or substantial improvements to existing structures. The actual start of construction must commence within 180 days of issuance of the building permit.

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.

“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.

“Substantial Repair of a Foundation” – When work to repair or replace a foundation results in:

- a) 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***
- b) 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.

“Variance” – A grant of relief by a community from the terms of a flood plain management regulation.

“Violation” – 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.

SECTION 16.2 DESIGNATION OF FLOODPLAIN ADMINISTRATOR

The Town of Amherst hereby designates the position of the Planning Director to be the official Floodplain Administrator for the Town. In the event that the Planning Director position is vacant or the Planning Director is absent, their designee shall fulfill the duties of the Floodplain Administrator.

The Floodplain Administrator shall have the authority to interpret this bylaw consistent with its intent and purpose, and may establish policies and procedures in order to clarify the application of its provisions. Such interpretations, policies, and procedures shall not have the effect of waiving requirements specifically provided in this bylaw without the granting of a variance pursuant to sections below in this bylaw.

The duties of the Floodplain Administrator may include:

- a) Applying the regulations for development in the FEMA Floodplain Overlay District;*
- b) Ensuring that permits are applied for when development of any kind is proposed in the FEMA Floodplain Overlay District;*
- c) Coordination with other local departments and municipal officials including Inspection Services, Department of Public Works, Planning Board, Zoning Board of Appeals, and Conservation Commission;*
- d) Notifying adjacent communities prior to alteration of a watercourse;*
- e) Working with the appropriate local staff to coordinate compliance issues and enforcement actions such as activities to correct violations of the bylaw;*
- f) Maintaining current and historic FEMA maps available for public inspection;*
- g) Signing the Community Acknowledgement Form when a property owner wishes to file for a Letter of Map Revision (LOMR) with FEMA; and*

- h) Notifying FEMA if the Town acquires data that changes the Base Flood Elevation in the FEMA mapped Special Flood Hazard Areas, within 6 months of such changes by submitting the technical or scientific data that supports the changes to FEMA Region 1 Risk Analysis and to the Massachusetts NFIP State Coordinator.*

SECTION 16.3 REGULATIONS

The floodplain management regulations found in the FEMA Floodplain Overlay District section shall take precedence over any less restrictive conflicting local laws, bylaws, or codes. The degree of flood protection required by this bylaw is considered reasonable by the Town but does not imply total flood protection.

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.

- 16.31 Local Permitting.** *The Town of Amherst requires a permit for all proposed construction or other development in the FEMA Floodplain Overlay District, including new construction or changes to existing buildings, placement of manufactured homes, placement of agricultural facilities, placement of fill, fences, sheds, storage facilities or drilling, mining, paving and any other development that might increase flooding or adversely impact flood risks to other properties.*

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 FEMA Floodplain Overlay District. In addition to any building permit or other local, state, or federal permits needed, any development in the FEMA Floodplain Overlay District shall require review by the Wetlands Administrator to determine if review and approval by the Conservation Commission is required.

- 16.32 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 A and AE, along watercourses that have a regulatory floodway designated on the Town's FIRM maps, 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.

16.33 Unnumbered A Zones. *In A Zones, in the absence of FEMA Base Flood Elevation data and floodway data, Inspection Services 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.*

16.34 Subdivision Approvals. *All subdivision proposals and development proposals in the FEMA Floodplain Overlay District shall be reviewed by Town staff to assure that:*

- a) Such proposals minimize flood damage and, to the maximum extent feasible, locate all structures, roads, utilities, and other infrastructure out of the FEMA Floodplain Overlay District.*
- b) Public utilities and facilities are located and constructed so as to minimize flood damage.*
- c) Adequate drainage is provided to reduce exposure to flood hazards.*
- d) Existing 1' topographic contours shall be included on the plans, as well as elevations of existing and proposed structures.*

Where such development is subject to Site Plan Review under Article 11 of the Zoning Bylaw, and any other sections of the Amherst Zoning Bylaw, the Planning Board shall incorporate these standards into their review. Where such development is subject to the Rules and Regulations Governing the Subdivision of Land, the Planning Board shall incorporate these standards into their Subdivision Plan review.

16.35 Base Flood Elevation Data for Subdivision Proposals. *When proposing subdivisions or other developments greater than 50 lots and/or 5 acres, the proponent must provide technical data to determine base flood elevations for each developable parcel shown on the design plans.*

16.36 Recreational Vehicles. *In Zones A and AE, all recreational vehicles to be placed on a site must be elevated and anchored in accordance with the FEMA's flood zone regulations for foundation and elevation requirements, or be on the site for less than 180 consecutive days, or be fully licensed and highway ready. See definition of Recreational Vehicles in Section 16.1.*

16.37 Watercourse Alterations or Relocations in Riverine Areas. *In a riverine situation, the Floodplain Administrator shall notify the following of any proposed or actual alteration or relocation of a watercourse:*

- a) Adjacent Communities, especially upstream and downstream;*
- b) Bordering States, if affected;*

- c) *Massachusetts NFIP State Coordinator; and*
- d) *FEMA Region 1 NFIP Program Specialist.*

16.38 *State Variances to Building Code Floodplain Standards. The Floodplain Administrator shall 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 shall maintain this record in the community's files.*

The Floodplain Administrator shall also issue a letter to the property owner regarding potential impacts to the annual premiums for the flood insurance policy covering that property 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 letter shall be maintained with the record of all variance actions for the referenced development in the FEMA Floodplain Overlay District.

16.39 *Variances from Amherst's Zoning Bylaw related to community compliance with the National Flood Insurance Program. An application for a variance from the requirements of the FEMA Floodplain Overlay District, requested from the Zoning Board of Appeals, must meet all the requirements set out by State law (MGL Chapter 40A) and the Zoning Bylaw (see Section 10.2 of the Zoning Bylaw). However, a variance shall not be issued within any designated regulatory floodway if the variance will result in any increase in flood levels during the base flood discharge would result from the application. In addition to those requirements, a variance may only be granted if:*

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

SECTION 16.4 ENFORCEMENT

The Building Commissioner will be responsible for issuing a notice of non-compliance to the property owner for any non-compliant floodplain development in the FEMA Floodplain Overlay District. Such notice will identify the non-compliant development and will contain instructions regarding the actions that the property owner must take in order to come into compliance. Such actions may include, but are not limited to, removal of the fill, structures or paving that might increase flooding or adversely impact flood risks to other properties. Any person violating the FEMA Floodplain Overlay District Bylaw shall be subject to a penalty of \$300.00 for each offense. Each day that such violation continues shall constitute a separate offense. The Building Commissioner may enforce this Bylaw by

non-criminal complaint pursuant to the provisions of General Laws Chapter 40, Section 21D.