

CODIFICATION OF ORDINANCE

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Sec. 1 STATEMENT OF PURPOSE

It is the purpose of this ordinance to promote the public health, safety, and general welfare, and to minimize public and private losses due to flood conditions in specific areas by provisions designed:

A. To protect human life and health;

B. To minimize expenditure of public money for costly flood control projects;

C. To minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;

D. To minimize prolonged business interruptions;

E. To minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets and bridges located in areas of special flood hazard;

F. To help maintain a stable tax base by providing for the second use and development of areas of special flood hazard so as to minimize future flood blight areas;

G. To insure that potential buyers are notified that property is in an area of special flood hazard; and H. To ensure that those who occupy the areas of special flood hazard assume responsibility for their actions.

Sec. 2 DEFINITIONS

Unless specifically defined below, words or phrases used in this ordinance shall be interpreted so as to give them the meaning they have in common usage and to give this ordinance its most reasonable application.

“Area of special flood hazard” is the area within the community subject to one percent or greater chance of flooding in any given year.

- “Base flood” means the flood having a one percent chance of being equaled or exceeded in any given year.

“Base Flood Elevation (BFE)” is the water surface elevation of the base flood in relation to a standard set of geographic data in Special Flood Hazard Areas.

- “Basement” means that portion of a building having its floor sub grade (below ground level) on all sides.

- Building – see definition for “Structure”

- Cost – As related substantial improvements, the cost of any reconstruction, rehabilitation, addition, alteration, repair or other improvement of a structure shall be established by a detailed written contractor’s estimate. The estimate shall include, but not be limited to: the cost of materials (interior finishing, components, structural components, utility and service equipment); sales tax on materials building equipment and fixtures, including heating and air conditioning and utility meters; labor; built-in appliances; demolition and site preparation; repairs made to damaged parts of the building worked on at the same time; contractor’s overhead; contractor’s profit; and grand total. Items to be excluded include: cost of plans and specifications; survey costs; permit fees; outside improvements such as septic systems, water supply wells, landscaping, sidewalks, fences, yard lights, irrigation systems, and detached structures such as garages, sheds and gazebos.

- “Development” means any man-made change to improved or unimproved real estate, including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavating, drilling operations, or permanent storage of materials or equipment. Federal Emergency Management Agency (FEMA) – the federal agency that administers the National Flood Insurance Program (NFIP).

Finished Living Space – Finished living space can include, but not limited to, a space that is heated and/or cooled, contains finished floors (tile, linoleum, hardwood, etc.) has sheetrock

walls that may or may not be painted or wallpapered and other amenities such as furniture, appliances, bathrooms, fireplace and other items that are easily damaged by floodwaters and expensive to clean, repair or replace. A fully enclosed area below the base flood elevation (BFE) cannot have finished living space and needs to be designed for exposure to flood forces. These spaces can only be used parking, building access or limited storage.

- “Flood” of “flooding” means a general and temporary condition of partial or complete inundation or normally dry land areas from:

1. the overflow of inland or tidal water;

2. the unusual and rapid accumulation of runoff of surface waters from any source.

“Flood Boundary and Floodway Map (FBFM)” is the official map on which the Federal Emergency Management Agency has delineated the floodway, 100-year floodplain and 500-year floodplain.

- “Flood Insurance Rate Map (FIRM)” means an official map of a community on which the Federal Emergency Management Agency has delineated both the areas of special flood hazard and the applicable risk premium zones.

- “Flood Insurance Study” is the official report by the Federal Emergency Management Agency. The report contains flood profiles as well as the Flood Boundary Floodway Map and the water surface elevation of the base flood.

- “Floodway” means 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 one foot.

- “Floor” means the top surface of an enclosed area in a building (including basement) i.e., top of slab in concrete slab construction or top of wood flooring in wood frame construction. The term does not include the floor of a garage used solely for parking of vehicles.
- “Functionally Dependent Facility” means a facility which cannot be used for its intended purpose unless it is located in close proximity to water, such as docking or port facility necessary for the loading or unloading of cargo or passengers, shipbuilding, ship repair, or seafood processing facilities . The term does not include long-term storage, manufacture, sales or service facilities.
- Highest Adjacent Grade (HAG) – The highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.
- “Lowest Floor” means the lowest floor of the lowest enclosed area (including basement).
- Market Value – Market value of the structure shall be determined by (an independent appraisal by a professional appraiser; the property tax assessment, minus land value, the replacement cost minus depreciation of the structure; the structure’s Actual Cash Value) Town can pick the method it likes from above list.
- “Manufactured Home” means a structure, transportable in one or more sections, which is built on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities. The term also includes recreational vehicles, park trailers, travel trailers, and similar transportable structures placed on a site for 180 consecutive days or longer and intended to be improved property.
- “Manufactured Home Park or Subdivision” means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

- Mean Sea Level (MSL) – The North American Vertical Datum (NVVD) of 1988 or other datum, to which base flood elevations shown on a community’s Flood Insurance Rate Map (FIRM) are referenced.

- “National Geodetic Vertical Datum (NGVD)” as corrected in 1929 is a vertical control used as a reference for established within the floodplain.

- “New Construction” means structures for which the “start of construction” commenced on or after the effective date of this ordinance, May 23, 1982 (not the revision date).

- “Recreational Vehicle” means a vehicle which is:
 - a. Built on a single chassis;

 - b. Measures 400 square feet or less at the largest horizontal projections;

 - c. Designed to be self-propelled or permanently towable; and

 - d. Designed primarily not for use as a permanent dwelling, but as temporary living quarters for recreational, camping travel or seasonal use.

- “Start of Construction” (for other than new construction or substantial improvements under the Coastal Barriers Resources Act (P.L. 97-348), includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, or improvement was within 180 days of the permit date. The actual start means the first placement of permanent construction of a structure (including a manufactured home) on

a site, such as the pouring of slabs or footings, installation of piles, construction of columns, or any work beyond the stage of excavation or placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings piers or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. 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 affects the external dimensions of the building.

- Special Flood Hazard Area (SFHA) – The land in the floodplain within a community subject to a one (1) percent or greater chance of flooding in any given year. SFHAs are determined utilizing the base flood elevation (BFE) provided on the flood profiles in the Flood Insurance Study (FIS) for a community. BFEs provided on Flood Insurance Rate Maps (FIRM) are only approximate (rounded up or down) and should be verified with the BFEs published in the FIS for a specific location. The SFHA is also called the Area of Special Flood Hazard.
- “Substantial Damage” means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damage condition would equal or exceed 50 percent of the market value of the structure before damage occurred.
- “Substantial Improvement” means any combination of repairs, reconstruction, alteration, or improvements to a structure taking place over a ten year period, in which the cumulative cost equals or exceeds fifty percent of the market value of the structure. The market value of the structure should be (1) the appraised value of the structure (using the cost approach to value) prior to the start of the initial repair or improvement, or (2) in the case of damage, the value of the structure prior to the damage occurring. 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 the alteration affects the external dimensions of the structure. The term does not, however, include any improvements project required to comply with existing health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions.
- “Structure” means a walled and roofed building that is principally above ground, a

manufactured home, a gas or liquid storage tank, or other man-made facilities or infrastructures.

- Variance – A grant of relief by a community from the terms of the floodplain management ordinance that allows construction in a manner otherwise prohibited and where specific enforcement would result in unnecessary hardship.
- Violation – 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 required permits, lowest floor elevation documentation flood-proofing certificates or required floodway encroachment calculations is resumed to be violation until such time as that documentation is provided.
- “Water Surface Elevation” means the height, in relation to the National Geodetic Vertical Datum (NGVD) of 1929, (or other datum, where specified) of floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas.

Sec. 3 FLOOD PLAIN DISTRICT

The Flood Plain District includes all special flood hazard areas designated as Zone A, A1-30 on the Town of Marlborough Flood Insurance Rate Maps (FIRM), on file with the Town Clerk. These Maps, as well as the accompanying Town of Marlborough Flood Insurance Study dated September 26, 2008 and any subsequent revisions thereto, are adopted by reference and declared to be a part of this regulation. Since mapping is legally adopted by reference into this Ordinance it must take precedence when more restrictive until such time as a map amendment is obtained.

Sec. 4 GENERAL STANDARDS:

Within Zone A, A1-30, the following standards must be met prior to issuing permits for any proposed construction/development.

A. Anchoring: All new construction and substantial improvements shall be anchored to prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy.

B. Construction Materials and Methods: a) All new construction and substantial improvements shall be constructed with materials resistant to flood damage. b.) All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damage.

For New Construction and Substantial Improvements – Require that fully enclosed areas below the lowest floor that are usable solely for the parking of vehicles, building access or limited storage in an area other than a basement, and which are subject to flooding, shall be designed to automatically equalize hydrostatic flood forces on the exterior walls by allowing for the entry and exit of flood waters. Designs meeting this requirement must either be certified by a registered professional engineer or architect, or meet or exceed the following criteria: a minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided. The bottom of all openings shall be no higher than one foot above grade.

C. Utilities:

1.) Electrical, heating, ventilation, plumbing, air conditioning equipment, and other service facilities shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

2.) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the systems.

3.) New and replacement sanitary sewerage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharge from the systems into flood waters.

4.) On-site waste water disposal systems shall be located and constructed to avoid impairment to them or contamination from them during flooding.

D. Compensatory Storage – The water holding capacity of the flood plain, except those areas that are tidally influenced, shall not be reduced. Any reduction caused by filling, new construction, or substantial improvements involving an increase in footprint to the structure shall be compensated for by deepening and/or widening of the floodplain. Storage shall be provided on-site, unless easements have been gained from adjacent property owners; it shall be provided within the same hydraulic reach and a volume not previously used for flood storage; it shall be hydraulically comparable and incrementally equal to the theoretical volume of flood water at each elevation, up to and including the 100- year flood elevation, which would be displaced by the proposed project. Such compensatory volume shall have an unrestricted hydraulic connection to the same waterway or water body. Compensatory storage can be provided off-site if approved by the municipality.

E. Equal Conveyance – Within the floodplain, except those areas which are tidally influenced, as designed on the Flood Insurance Rate Map (FIRM) for the community, encroachments resulting from filling, new construction, or substantial improvements involving an increase in footprint of the structure, are prohibited unless the applicant provides certification by a registered professional engineer demonstrating, with supporting hydrologic and hydraulic analyses performed in accordance with standard engineering practice, that such encroachments shall not result in any (0.0 feet) increase in flood levels (base flood elevation). Work within the floodplain and land adjacent to the floodplain, including work to provide compensatory flood storage shall not be constructed in such a way so as to cause and increase in flood stage or flood velocity.

F. Aboveground Oil Tanks – Above-ground storage tanks (oil, propane, etc.) which are located outside or inside of the structures must be either elevated above the base flood elevation (BFE) on a concrete pad, or securely anchored with tie-down straps to prevent floatation or lateral

movement have the top of the fill pipe extended above the BFE, and have a screw fill cap that does not allow for the infiltration of flood water.

G. Portion of Structure in Flood Zone – If any portion of a structure lies within the Special Flood Hazard Area (SFHA), the entire structure is considered to be in the SFHA. The entire structure must meet the construction requirements of the flood zone. The structure includes any attached additions, garages, decks, sunrooms, or any structure attached to the main structure. Decks or porches that extend into a more restrictive flood zone will require the entire structure to meet the standards of the more restrictive zone.

H. Structures in Two Flood zones – If a structure lies within two or more flood zones, the construction standards of the most restrictive zone apply to the entire structure (i.e., V zone is more restrictive than A zone: structure must be built to the highest BFE). The structure includes any attached additions, garages, decks, sunrooms, or any other structure attached to the main structure. (Decks or porches that extend into a more restrictive flood zone will require the entire structure to meet the standards of the more restrictive zone.)

I. No Structures Entirely or Partially Over Water – New Construction, substantial improvements and repair to structures that have sustained substantial damage cannot be constructed or located entirely or partially over water.

Sec.5 DEVELOPMENT REGULATIONS:

In all areas of flood hazard AI-30, AE, AH where base flood elevation data has been provided the following regulations shall apply:

(A) Residential Construction: New construction and substantial improvement of any residential structures shall have the lowest floor, including basement elevated to or above the base flood elevation.

(B) Non residential Construction: New construction and substantial improvement of non residential structures shall be constructed in accordance with Sec. 5 (A) above, or together with attendant utility and sanitary facilities shall:

1. Be flood proofed so that below the base flood level the structure is watertight with walls substantially impermeable to the passage of water;

2. Have structural components capable of resisting hydrostatic and hydrodynamic loads and effect of buoyancy.

A registered professional engineer or architect shall review and/or develop structural design specifications and plans for construction, and shall certify that the design and methods of construction are in accordance with acceptable standards of practice for meeting the provisions of this subsection. Such certification shall be provided to the Town Engineer as set forth in Section 6.

(C) New structures within the floodway are prohibited.

(D) Within the floodway, designated on the Flood Boundary and Floodway Map, all encroachments, including fill, new construction, substantial improvements to existing structures, and other development are prohibited unless certification by a registered professional engineer is provided by the applicant demonstrating that such encroachment shall not result in any (0.00) increase in flood levels during the occurrence of the 100-year flood. In A zones where base flood elevations have been determined, but before a floodway is designated, no new construction, substantial improvement, or other development (including fill) shall be permitted which will increase base flood elevations more than one (1) foot at any point along the watercourse when all anticipated development is considered cumulatively with the proposed development. Should data be requested and/or provided, the Town shall adopt a regulatory floodway based on the principle that the floodway must be able to convey the waters of the base flood without increasing the water surface elevation more than one (1) foot at any point along the watercourse.

(E) Manufactured homes shall not be placed in the Flood Plain District.

(F) All recreational vehicles to be placed on a site within an Area of Special Flood Hazard must either: (i) be on a site fewer than 180 consecutive days, (ii) be fully licensed and ready for highway use, (iii) meet elevation and anchoring requirements for Residential Construction described in Section 5 (A). A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions.

Sec. 6. ADMINISTRATION:

ESTABLISHMENT OF DEVELOPMENT PERMIT:

A. A development permit shall be obtained from the Town Engineer before construction or development begins within Zone A, A1-30.

B. The Town Engineer shall review permits to assure sites are reasonably free from flooding and require that all other Local, State, and Federal permits are obtained.

C. Alteration of Watercourse: Prior to any initiation of such alteration the Town shall:

1.) Notify adjacent communities and the Department of Environmental Protection Water Resources Unit prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency;

2.) Require that maintenance is provided within the altered or relocated portion of said watercourse so that the flood carrying capacity is not diminished.

D. Within Zone A, the applicant shall provide to the Town Engineer any base flood elevation and floodway data available from a federal, state, or other source, including data developed pursuant to Section 7 (D) of the ordinance. The Town Engineer shall review such data and may reasonably use it as criteria for requiring that new construction, substantial improvements, or other development in Zone A meet the standards of Section 4 and 5.

E. Information to be supplied by the applicant, obtained by the Town Engineer and maintained by the Building Official:

1.) Verify and record the actual elevation (in relation to mean sea level) to which any flood proofing is effective; and

2.) Obtain and record the actual elevation (in relation to mean sea level) of the lowest floor (including basement) of all new and substantially improved structures:

3. Maintain the flood proofing certifications required in Section 5.B.

4. The Building Official shall maintain for public inspection, all records pertaining to the provisions of this ordinance.

Sec. 7 SUBDIVISION STANDARDS FOR THE FLOOD PLAIN DISTRICT

All subdivision proposals and other proposed new development shall be reviewed to determine whether such proposals will be reasonably safe from flooding. If any part of a subdivision proposal or other development is located within the Flood Plain District established under the Regulations, the Town Engineer and the Planning Commission shall review it.

A. The proposal is designed to be 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) and floodway data shall be provided for that portion within the Flood Plain District.

E. Land located within the floodway shall not be subdivided for building lot purposes unless sufficient land area is available outside the floodway area, as part of the lot, for the structure and subsurface disposal system.

Sec. 8 APPEALS & VARIANCES

The Building Appeals Board shall hear and decide appeals relating to the enforcement and administration of this ordinance and requests for variances from the requirements of this ordinance.

A. A variance shall not be issued within any designated regulatory floodway if any increase in flood levels during the base flood discharge would result.

B. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

C. Variances shall only be issued upon:

1.) a showing of good and sufficient cause;

2.) a determination that failure to grant the variance would result in exceptional hardship to the applicant; and

3.) a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.

D. If a variance is granted, the Building Appeals Board shall notify the applicant in writing over their signature that: the issuance of such variance to construct a structure below the base flood elevation will result in increased premium rates for flood insurance up to amounts as high as \$25 for \$100 of insurance coverage, and such construction below the base flood level increases risks to life and property.

E. The Building Appeals Board will maintain a record of all variance actions, including justification for their issuance and report such variances issued in the Annual Report submitted to the Federal Emergency Management Agency.

Section 9 Severability

If any section, provision, or portion of this Ordinance is adjudged unconstitutional or invalid by a court for any reason whatsoever, the remainder of the Ordinance shall not be affected, which shall remain in full force and effect; and to this end the provisions of this Ordinance are hereby declared to be severable.

Section 10 Abrogation and Greater Restrictions

This Ordinance is not intended to repeal abrogate, or impair any existing law, regulations, ordinances, easements, covenants, or deed restrictions. However, where this ordinance and another conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

Section 11 Warning and Disclaimer of Liability

The degree of flood protection required by the ordinance is considered the minimum reasonable for regulatory purpose and is based on scientific and engineering consideration. Larger floods can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes. This Ordinance does not imply that land outside the special flood hazard areas or uses permitted within such areas will be free from flooding or flood damages. This Ordinance shall not create liability on the part of the Town of Marlborough or any officer or employee thereof for any flood damages that result for reliance on this ordinance or any administrative decision lawfully made there under.

Section 12 Penalties

In accordance with CGS 7-148(b)(1) and person(s), or party found to be in violation of this ordinance will be subject to a \$250.00 a day fine for each day such violation continues, as well as, being responsible for all Town legal fees and cost that are a result of court action.

This ordinance shall take effect (30) days following publication in accordance with Sect 7-157 of the Connecticut General Statutes.

Dated at Marlborough, Connecticut this 27th day of August, 2008.