

Section 5.03 Flood Hazard Overlay District⁴⁶**(a) Purpose and Administration**

The Flood Hazard Overlay District is herein established as an overlay district to:

- (i) Ensure public safety through reducing the threats to life and personal injury
- (ii) Eliminate new hazards to emergency response officials
- (iii) Prevent the occurrence of public emergencies resulting from water quality, contamination, and pollution due to flooding
- (iv) 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
- (v) Eliminate costs associated with the response and cleanup of flooding conditions
- (vi) Reduce damage to public and private property resulting from flooding waters
- (vii) Establish uses that are compatible with areas prone to flooding.

The Town of Mendon hereby designates the position of Conservation Agent to be the official floodplain administrator for the Town.

(b) Flood Hazard Overlay District Delineation

The Flood Hazard Overlay District includes all special flood hazard areas within the Town of Mendon designated as Zones A and AE, on the Worcester 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 Worcester County FIRM that are wholly or partially within the Town of Mendon are panel numbers 25027C0864E, 25027C1030E, 25027C1031E, 25027C1033E, and 25027C1034E, dated July 4, 2011 and 25027C0868F, 25027C1032F, and 25027C1055F, dated July 8, 2025. The exact boundaries of the Flood Plain District may be defined by the 100-year base flood elevations shown on the FIRM and further defined by the Worcester County Flood Insurance Study (FIS) report dated July 8, 2025. The FIRM and FIS report are incorporated herein by reference and are on file with the Town Clerk and Building Inspector.

(c) Definitions

The following definitions apply only to Section 5.03, Flood Hazard Overlay District:

- (i) **Development:** Any man-made change to improved or unimproved real estate, including but not limited to building or other structures, mining, dredging, filling,

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grading, paving, excavation or drilling operations or storage of equipment or materials. [US Code of Federal Regulations, Title 44, Part 59]

(ii) **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.

(iii) **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. [Base Code, Chapter 2, Section 202]

(iv) **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. [US Code of Federal Regulations, Title 44, Part 59] Also [Referenced Standard ASCE 24-14]

(v) **Highest Adjacent Grade:** 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]

(vi) **Historic Structure:** Any structure that is:
(1) 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;
(2) 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;
(3) 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
(4) Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
(5) By an approved state program as determined by the Secretary of the Interior or
(6) Directly by the Secretary of the Interior in states without approved programs.

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

(viii) **Manufactured Home:** A structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a

permanent foundation when connected to the required utilities. For floodplain management purposes, the term "manufactured home" also includes park trailers, travel trailers, and other similar vehicles placed on a site for greater than 180 consecutive days. For insurance purposes, the term "manufactured home" does not include park trailers, travel trailers, and other similar vehicles.

- (ix) **Manufactured Home Park or Subdivision:** A parcel, or contiguous parcels, of land divided into two or more manufactured home lots for rent or sale.
- (x) **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]
- (xi) **One-Hundred Year Flood:** See "base flood."
- (xii) **Recreational Vehicle:** A vehicle which is:
 - (1) Built on a single chassis;
 - (2) 400 square feet or less when measured at the largest horizontal projection;
 - (3) Designed to be self-propelled or permanently towable by a light duty truck; and
 - (4) 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]
- (xiii) **Regulatory Floodway:** See "floodway."
- (xiv) **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]
- (xv) **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]

- (xvi) **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. [US Code of Federal Regulations, Title 44, Part 59]
- (xvii) **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.
- (xviii) **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.
- (xix) **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]
- (xx) **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]
- (xxi) **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]

(d) Special Permits

A Special Permit is required for all proposed construction or other development in the Flood Hazard 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. All development, as

well as the permitted uses and requirements of the underlying district, must comply with all requirements and laws relevant to uses allowed in the Flood Hazard Overlay District.

(i) Requirements

(1) The Town of Mendon requires a Special Permit to be issued by the Planning Board for all proposed use, construction, or other development as defined by FEMA in the Flood Hazard Overlay District including, but not limited to,

- a) new construction or changes to existing buildings,
- b) placement of manufactured homes,
- c) temporary or permanent structures including fences, sheds, storage facilities, agricultural facilities, or play areas,
- d) storage of vehicles, including agricultural and recreational vehicles
- e) and/or drilling, mining, paving and any other development that might increase flooding or adversely impact flood risks to other properties.

(2) Special considerations.

- a) In A and AE zones, storage of 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.
- b) In the case of a use not included above, the floodplain administrator will determine whether a special permit is required.

(3) No special permit may be issued unless the proposed use or structure is in compliance with MGL c. 131, § 40, and with demonstrated evidence of acquisition of and compliance with all other necessary permits as outlined below. 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.

- a) The section of the Massachusetts State Building Code which addresses floodplain and coastal high-hazard areas (currently 780 CMR 115G, Flood Resistant Construction and Construction in Coastal Dunes), as may be amended.
- b) Wetlands Protection Regulations, Department of Environmental Protection (DEP), currently 310 CMR 10.00, as may be amended.
- c) Minimum Requirements for the Subsurface Disposal of Sanitary Sewage, DEP, currently 310 CMR 15, Title 5, as may be amended.
- d) The Mendon Wetlands Protection By-law and accompanying regulations, as may be amended.
- e) Any regulations or by-laws adopted by the Board of Health.

- f) All other state and federal permits as required by the Massachusetts Department of Conservation and Recreation, Massachusetts Department of Environmental Protection, Environmental Protection Agency, Federal Emergency Management Agency, and/or other departments and agencies as may be amended.
- (ii) Special Permit Determination
In addition to the foregoing requirements, the Planning Board shall consider the following in determining whether to issue a special permit:
 - (1) In Zone AE along watercourses that have a regulatory floodway designated within the Town of Mendon on the Worcester County Flood Insurance Rate 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.
 - (2) All development proposals, including subdivision proposals, in the Flood Hazard Overlay District shall be reviewed 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.
 - (3) 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.
 - (4) All applications for special permits shall include a site and development plan. Said plans shall, at a minimum, show existing contour intervals of site and elevations of existing structures.
 - (5) There shall be established a "routing procedure" which will circulate or transmit one copy of the site and development plan to the Conservation Commission, Planning Board, Board of Health, Building Inspector, Town Engineer, Highway Surveyor, Town Clerk, Select Board, and Board of Assessors for comments which will be considered by the Planning Board prior to issuing applicable permits.

(e) Variances

- (i) Granting Authority. 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 the State Building Code Appeals Board.
 - (1) The applicant will provide the Town of Mendon, from the State Building Code Appeals Board, a written and/or audible copy of the portion of the hearing related to the variance, and the Town will maintain this record in the community's files.
 - (2) 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 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.
 - (3) Such notification shall be maintained with the record of all variance actions for the referenced development in the Flood Hazard Overlay District.
- (ii) Requirements. A variance from these Flood Hazard by-laws 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.

(f) Floodway Data and Base Flood Elevation

- (i) Floodway Data & Floodway Encroachment
 - (1) 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.
 - (2) In Zone AE, along watercourses that have a regulatory floodway designated on the Town's FIRM or Flood Boundary & Floodway Map, 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.

(ii) Base Flood Elevation Data

(1) 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.

(g) Notification of Watercourse Alteration & Submittal of New Technical Data

(i) In a riverine situation, the Conservation Commission shall notify the following of any alteration or relocation of a watercourse:

- (1) Adjacent communities
- (2) Bordering states, if affected
- (3) NFIP State Coordinator
Massachusetts Department of Conservation and Recreation
- (4) NFIP Program Specialist
Federal Emergency Management Agency, Region I

(ii) 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:

- (1) NFIP State Coordinator
Massachusetts Department of Conservation and Recreation
- (2) NFIP Program Specialist
Federal Emergency Management Agency, Region I

(h) Abrogation and Greater Restriction

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

(i) Disclaimer of Liability

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

(j) Severability

If any section, provision or portion of this by-law is deemed to be unconstitutional or invalid by a court, the remainder of the ordinance shall be effective.

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~~Voted 5/1/2009; AG Approved 8/11/2009; Effective 5/1/2009~~

~~Voted 6/28/2011; AG Approved 10/6/2011; Effective 6/28/2011~~

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