

ARTICLE __: To see if the Town will vote to delete Section 5.9 of the Town of Leyden Zoning Bylaws and replace it with a new Section 5.9 Floodplain Overlay District and this action includes moving the definitions for flood hazard boundary map, floodway, regulatory floodway, special flood hazard area and structure from Section 3 to Section 5.9, as follows or take any action relating thereto. This Article requires a 2/3rds majority vote.

Section 5.9 Floodplain Overlay District

A. Statement Of Purpose

The purposes of the Floodplain Overlay District are 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 a reduction in water quality, contamination, and/or 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. Reduce costs associated with the response and cleanup of flooding conditions;
6. Reduce damage to public and private property resulting from flooding waters.

B. DEFINITIONS

1. 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]
2. 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.
3. Regulatory Floodway - See Floodway
4. 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]

5. 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]
6. 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:
 - 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. [US Code of Federal Regulations, Title 44, Part 59]
7. 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]
8. 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]
9. Special Flood Hazard Area: 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 also be designated as Zone A.
10. 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.

11. Structure: For floodplain management purposes, structure means a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a mobile home. Structure, for insurance coverage purposes, means a walled and roofed building, other than a gas or liquid storage tank, that is principally above ground and affixed to a permanent site, as well as a mobile home on foundation. For the latter purpose, the term includes a building in the course of construction, alteration, or repair, but does not include building materials or supplies intended for use in such construction, alteration, or repair, unless such materials or supplies are within an enclosed building on the premises.
12. 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]
13. Substantial Repair of 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]
14. 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]
15. 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]

C. Floodplain District Boundaries, Base Flood Elevation and Floodway Data

1. The Floodplain District is herein established as an overlay district. The District includes all special flood hazard areas designated on the Town of Leyden, MA Flood Hazard Boundary Map (FHBM) issued by the Department of Housing and Urban Development, Federal Insurance Administration, dated February 7, 1975, as Special Flood Hazard Areas or Zone A, which indicates the 100-year regulatory floodplain.
2. The FHBM is incorporated herein by reference and is on file with the Town Clerk, Zoning Board of Appeals, Planning Board, Building Inspector, and Conservation Commission.
3. Floodway Data: In Special Flood Hazard Areas or Zone A, along watercourses that have not had a regulatory floodway designated, the best available Federal, State, local, or other floodway data shall be used as outlined in the State Building Code 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.
4. Base Flood Elevation Data: Base flood elevation data is required for subdivision proposals or other developments greater than 3 lots or 5 acres, whichever is less, where a portion of the development activity would be located within Special Flood Hazard Areas or A zones.

D. Floodplain Administrator and Permits Required

1. The Town of Leyden hereby designates the position of Chair of the Planning Board to be the official floodplain administrator for the Town.
2. The Town of Leyden 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, paving and any other development that might increase flooding or adversely impact flood risks to other properties.
3. 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 demonstrate to the Leyden Building Inspector that all necessary permits have been acquired.

E. Unnumbered A Zones

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.

F. Subdivision proposals

1. All subdivision proposals and development proposals in the floodplain overlay district shall be
 - a. reviewed to assure that:
 - b. Such proposals minimize flood damage.
 - c. Public utilities and facilities are located & constructed so as to minimize flood damage.
 - d. Adequate drainage is provided.

G. Recreational vehicles

1. In A, A1-30, AH, AO, 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.

H. Notification Of Watercourse Alteration

The Leyden Building Inspector shall notify the following of any alteration or relocation of a river:

1. Adjacent Communities
2. State of Vermont
3. NFIP State Coordinator
4. NFIP Program Specialist

I. Submission of 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:

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

J. Use Regulations

1. Reference To Existing Regulations. All development in the Floodplain 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 (the Wetlands Protection Act) and with the following:

- a. Section of the Massachusetts State Building Code which addresses floodplain hazard areas (currently 780 CMR 120.G, "Flood Resistant Construction");
- b. Wetlands Protection Regulations, Department of Environmental Protection (DEP) (currently 310 CMR 10.00);
- c. Inland Wetlands Restriction, DEP (currently 310 CMR 13.00);
- d. Minimum Requirements for the Subsurface Disposal of Sanitary Sewage, DEP (currently 310 CMR 15, Title 5); and

K. Variances to building code floodplain standards

1. The Town will 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 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 floodplain overlay district.

L. Other Variances

1. A variance from these floodplain bylaws 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.
2. Permitted Uses. The following uses with low flood damage potential and causing no obstructions to flood flows are allowed provided they are permitted in the underlying district:
 - a. Agricultural uses such as farming, truck farming, horticulture, aquaculture, etc.
 - b. Forestry and nursery uses.
 - c. Outdoor recreational uses not requiring permanent structures, including fishing, boating, play areas, etc.
 - d. Conservation of water, plants, wildlife.
 - e. Wildlife management areas, foot, bicycle, and/or horse paths.

- f. Temporary non-residential structures used in connection with fishing, growing, harvesting, storage, or sale of crops raised on the premises.
 - g. Buildings lawfully existing prior to the adoption of these provisions.
 - h. Other legal uses in the underlying district remain permitted unless prohibited by Section D.3.
3. Prohibited Uses
- a. No altering, dumping, filling, or removal of riverine materials or dredging is permitted. Maintenance of the floodway may be done under requirements of M.G.L. Ch. 131, Sec. 40, and any other applicable laws, by-laws, and regulations, and must be done using best management practices.
 - b. No new impoundments, dams, or other water obstructions may be constructed within the district.
 - c. Commercial or industrial uses are prohibited in the district.
 - d. Storage of vehicles or equipment within the floodway, other than for normal residential use, is prohibited. The Zoning Board of Appeals may consider whether a variance from this prohibition is warranted.
 - e. Dumping of trash, garbage or other materials in the floodway is prohibited.
 - f. Storage or processing of hazardous materials is prohibited.
 - g. All other uses not specifically permitted within the district are prohibited.
4. Nonconforming Uses
- a. Any lawful use or structure existing at the effective date of this Bylaw/Ordinance or amendments thereof and not in conformance with the provisions of this bylaw/ordinance shall be considered to be a nonconforming use or structure governed by Section 2.5, Nonconforming Uses, herein.
 - b. Any nonconforming use or structure located in the floodplain may continue and may be maintained, repaired, and improved, but may in no event be made larger.
 - c. Any nonconforming structure located in the floodplain experiencing damage exceeding 80% of the assessed value may not be rebuilt.

M. Enforcement

Any violation of this section of the bylaw shall be subject to enforcement action by the Building Inspector pursuant to Section 6.1, Enforcement, herein.

- 1. Restoration of Lands. Any violator may be required to restore land to its undisturbed condition. In the event that restoration is not undertaken within a reasonable time after notice, the Building Inspector can file an enforcement action in the courts seeking injunctive relief, which could include a court order directing the violator to take actions to restore disturbed land or similar remedies.

N. Abrogation

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

O. Disclaimer

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

P. 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.