

SECTION 53 – FLOOD PLAIN DISTRICT

53.1 General:

The Flood Plain District is a class of district in addition to and overlapping one or more of the other districts. For the purposes of these regulations, the Flood Plain District shall include all areas of special flood hazard, Zones A1-A30, and floodway areas as shown on maps entitled ‘Flood Insurance Rates Map, Town of Middlebury, Connecticut’ and ‘Flood Boundary and Floodway Map, Town of Middlebury, Connecticut’, effective October 16, 1979 as part of the final Flood Insurance Studies, dated April 1979 prepared by the U.S. Department of Housing and Urban Development, Federal Insurance Administration. Said maps and any amendments thereto are hereby declared to be a part of these regulations and shall be on file in the Town Clerk’s Office.

References to and provisions in this Section 53 to “manufactured home(s)”, “manufactured home park” and “manufactured home site” shall not be construed as allowing or permitting any such structure or use in any zone except to the limited extent manufactured homes presently permitted under Section 65. The inclusion of references to and provisions concerning the foregoing structures and uses is merely for the purpose of enacting comprehensive Flood Plain Regulations in accordance with Federal Emergency Management Agency regulations, which take in to account the possibility of future zoning changes and for no other purpose. Accordingly, no other implication shall be drawn therefrom.

53.1.1 Definitions

For the purpose of this Section, certain words shall have the following Meaning:

Base Flood: means the flood having a one percent chance of being equaled or exceeded in any given year.

Base Flood Elevation: means the elevation of the base flood as recorded on the Flood Insurance Rate Map and accompanying stream profile data.

Floodway: means the high risk channel area of a watercourse and adjacent land area that must be reserved to discharge the base flood without increasing water surface elevations more than one foot.

Lowest Floor: means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood-resistant enclosure, usable solely for parking of vehicles, building access or storage, in an area other than a basement area, is not considered a building’s lowest floor.

Manufactured Home: means 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 attached to the required utilities. The term also includes park trailers, travel trailers, and similar transportable structures placed on a site for greater than 180 consecutive days 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.

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, excavation or drilling operations located within the area of special flood hazard.

New Construction: means structures for which the start of construction commenced on or after the effective date of this Section.

Start of Construction: 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 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 the 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.

Structure: means a walled and roofed building, a manufactured home, or a gas or liquid storage tank that is principally above ground.

Substantial Improvement: means any combination of repairs, reconstruction alteration or improvements to a structure, the costs of which equal or exceeds 50% of the market value of the structure as determined by the cost approach of value, the quantity survey method, the segregated cost method or the square foot method either before the improvement or repair is started or before the damage occurred if the structure has been

damaged and is being restored. 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.

Basement: means that portion of a building having its floor subgrade (below ground level) on all sides.

Flood Hazard Boundary Map (FHBM): means an official map of a community, issued by the Federal Emergency Management Agency, where the boundaries of the areas of special flood hazard have been defined as A zones.

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 zone.

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.

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 a docking or port facility necessary for the loading and 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.

Mean sea level (MSL): means, for purposes of the National Flood Insurance Program, the North American Vertical Datum (NAVD) of 1929 or other datum, to which base flood elevations shown on a community’s Flood Insurance Rate Map are referenced.

National Geodetic Vertical Datum (NGVD): as corrected in 1929 is a vertical control used as a reference for establishing varying elevations in the flood plain.

Water surface elevation: means the height, in relation to the North American Vertical Datum (NAVD) of 1929 (or other datum where specified), of floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas.

53.1.2

Purpose

The Flood Plain District recognizes that there are areas of the Town of Middlebury that are subject to potential, periodic, occasional or frequent flooding and which function as part of the natural drainage system of the Town. These regulations serve to establish necessary minimum standards and review procedure over the use of land in the Flood Plain District in order to: reduce flooding hazard to human life and health; reduce flood damages to public and private property, minimize disruptions of commerce and governmental services; protect property values; maintain the natural drainage system's capacity to safely store and transport flood waters; and minimize damaging flood erosion and any increases in downstream flood potential.

53.2

Permit Procedure

In the Flood Plain District, no structure shall be constructed, reconstructed, enlarged, extended, moved or structurally altered, no land use shall be established and no land shall be filled, graded or excavated until the Planning and Zoning Commission has approved a plan for the proposed structure, land use or alteration of land contour. Such approval shall not be granted or permit issued unless the plan complies with all of the requirements of Subsections 53.3, 53.4 and 53.5.

53.3

General Standards

In all areas of special flood hazard, the following provisions shall apply:

53.3.1

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.

53.3.2

New construction and substantial improvement shall be constructed of materials resistant to flood damage and using methods and practices that minimize flood damage.

53.3.3

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 accumulation within the components during conditions of flooding.

- 53.3.4 New and replacement water systems shall be designed to minimize infiltration of flood waters. New and replacement sanitary systems shall be designed to minimize infiltration of flood waters and discharge from the systems into flood waters. On-site sanitary disposal systems shall be located to avoid impairment to them or contamination from them during flooding.
- 53.3.5 In any portion of a watercourse which is altered or relocated, the flood carrying capacity shall be maintained.
- 53.3.6 Manufactured Homes
All manufactured homes (including “mobile” homes placed on site for 180 consecutive days or longer) shall be installed using methods and practices which minimize flood damage and shall be elevated and anchored to resist flotation, collapse, lateral movement resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy.
- 53.3.7 Structures and improvements shall be designed to cause the least possible impediment to the flow of floodwater and debris.
- 53.3.8 No outdoor storage of materials shall be permitted which would tend to be floated by floodwater and cause obstructions downstream.
- 53.3.9 All proposed development activities shall be reviewed to assure that all necessary permits have been received as required by Federal or State law. Such permit requirements may include, but not be limited to: Stream Channel Encroachment Line Permit, Water Diversion Permit, Dam Safety Permit, Corps of Engineers 404 Permit.

53.4 Specific Standards

The following provisions shall apply in all areas of special flood hazard A1-30, AE, AH or A zones where base flood elevation data has been provided in accordance with Subsections 53.1 or 53.9.4 of these regulations.

- 53.4.1 New construction and substantial improvements of any residential structure shall have the lowest floor, including basement, elevated at least two (2) feet above the base flood elevation.
- 53.4.2 New Construction and substantial improvement of any non-residential structure shall have the lowest floor, including basement, either elevated or flood proofed to at least two (2) feet above the base flood elevation. All flood-proofed structures shall meet the following standards: Together

with all attendant utilities and sanitary facilities, the areas of the structure below the required elevation shall be water tight with walls substantially impermeable to the passage of water, and shall use structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy. A registered professional engineer or architect shall review and/or develop structural design specifications and plans for the 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.

53.4.3

Manufactured Homes

All manufactured homes (including “mobile” homes placed on a site for 180 consecutive days or longer) to be placed or substantially improved shall meet the following standards:

- A. On sites which are (1) outside of a manufactured home park or subdivision, (2) in a new manufactured home park or subdivision, (3) in an expansion to an existing manufactured home park or subdivision, or (4) in an existing manufactured home park or subdivision on which a manufactured home has incurred “substantial damage” as the result of a flood:
 - 1. Be elevated on a permanent foundation such that the lowest floor is at least two (2) feet above the base floor elevation;
 - 2. Be securely anchored to an adequately anchored foundation system to resist flotation, collapse and lateral movement.

- B. On sites which are in an existing manufactured home park or subdivision other than those described in Subsection 53.4.3.A
 - 1. Be elevated so that either (i) the lowest floor of the manufactured home is at least two (2) feet above the base flood elevation; or (ii) the chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than 36 inches in height above grade; and
 - 2. Be securely anchored to an adequately anchored foundation system to resist flotation, collapse and lateral movement.

53.5 **Floodway Standards**

- 53.5.1 In A Zones where base flood elevations have been determined, but Before a floodway 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.
- 53.5.2 For areas without existing regulatory floodways, 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.
- 53.5.3 Since the floodway is an extremely hazardous area due to the velocity of flood waters which carry debris and potential projectiles and have erosion potential, no encroachment including fill, new construction, substantial improvements, and other developments shall be permitted in a floodway unless a technical evaluation demonstrates that the encroachment will not result in any (0.00 feet) increase in flood levels during the base flood discharge. All other Flood Plain District standards must also be satisfied.

53.6 **Application Requirements**

Application for approval of development in a flood plain shall be submitted to the Planning and Zoning Commission, and it shall include the following:

- 53.6.1 Three black and white prints of a plot pan of the premises, drawn to scale and certified by a licensed land surveyor and civil engineer, showing the actual shape and dimensions of the lot, the size and location of all existing and proposed structures and land uses, the layout of parking and loading facilities where applicable, and access thereto existing and proposed grades, base flood elevation data, and limits of the Flood Plain area.
- 53.6.2 Elevation in relation to mean sea level of the proposed lowest floor (including basement) of all structures (Subsection 53.4.1);
- 53.6.3 Elevation in relation to mean sea level to which any non-residential structure shall be flood-proofed (Subsection 53.4.2);
- 53.6.4 Description of the extent to which any watercourses will be altered or relocated as a result of proposed development;

- 53.6.5 A statement as to whether or not the proposed alterations to an existing structure meet the criteria of the substantial improvement definition (Subsection 53.1.1);
- 53.6.6 A statement as to whether there will be dry access to the structure during the 100-year storm event;
- 53.6.7 Certification as to flood-proofing, as required by Subsection 53.4.2;
- 53.6.8 Certification as to floodway heights, as required by Subsection 53.5.3;
- 53.6.9 Such other information as required by the Planning and Zoning Commission to determine compliance with these regulations.

53.7 Responsibilities of the Planning and Zoning Commission

In the administration of these regulations, the Planning and Zoning Commission shall perform the following duties, among others:

- 53.7.1 Obtain, review and reasonably utilize any base flood elevation and floodway data available from a Federal, State or other source in order to administer the provisions of Subsections 53.4 and 53.5, when base flood elevation data or floodway data have not been provided in accordance with Article 3, Section B.
- 53.7.2 Make the necessary interpretation, where needed, as to the exact location of boundaries of the areas of special flood hazard (for example, where there appears to be a conflict between a mapped boundary and actual field conditions). The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in the article.
- 53.7.3 Record and maintain a record of the actual elevation of the lowest floor, including basement, of all new or substantially improved structures in the Flood Plain District. The Planning and Zoning Commission shall also record the actual elevation to which flood-proofing is effective and flood-proofing certifications for all new or substantially improved flood-proofed structures.
- 53.7.4 Notify adjacent municipalities and the Water Resources Unit of the Connecticut Department of Environmental Protection prior to any alteration or relocations of a watercourse, and submit evidence of such notification to the Federal Insurance Administration.

53.8 Building Permit

No building permit shall be issued which is not conformance with the approved plan and with any other regulations governing the use of the applicant's property.

53.9 Standards for Subdivision Proposals

In all special flood hazard areas the following requirements shall apply:

- 53.9.1 All subdivision proposals shall be consistent with the need to minimize flood damage;
- 53.9.2 All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize flood damage;
- 53.9.3 All subdivision proposals shall provide adequate drainage to reduce exposure to flood hazards and;
- 53.9.4 Base Flood elevation data shall be provided for all subdivision proposals and other proposed development (including manufactured home parks and subdivisions) which are five acres or fifty lots, whichever occurs first, and are located in Zone A.

53.10 Variance Procedure

As provided in Section 71 of these regulations, the Zoning Board of Appeals shall hear and decide for variances from the requirements of Section 53 Flood Plain District. In passing upon such applications, the Board of Appeals shall consider the purpose of this Section 53 and all technical evaluations, relevant factors, and standards specified in Section 53 and may attach such conditions to the granting of variances as it deems necessary to further the purposes of this Section.

53.10.1 Conditions Under Which Variances May be Granted

- A. Variances shall only be issued under determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
- B. Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.

C. Issuance of a variance may be considered for the reconstruction rehabilitation or restoration of structures listed on the National Register of Historic Places or the State Inventory of Historic Places.

53.10.2 Written Notice of Applicant

Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with a lowest floor elevation below the base flood elevation. Such notice shall also advise the applicant that the project is not exempted from flood insurance requirements and that insurance costs will be commensurate with the increased risk resulting from the reduced lowest floor elevation. In some cases, a variance may result in increased insurance premium rates that could to as high as \$25 per \$100 coverage.

53.10.3 The Zoning Board of Appeals shall maintain the record of all appeal Actions, including technical information and report any variances to the Federal Insurance Administration upon request.