



PLANNING BOARD

P.O. Box 1305
Littleton, Massachusetts 01460

April 23, 2025

REPORT TO TOWN MEETING

May 6, 2025

Article 17

Zoning Bylaw amendment to
Article XVI: Wetlands and Floodplain Regulations

The Public Hearing regarding the proposed zoning amendment "Article XVI: Floodplain Regulation" was duly advertised and held on **Thursday, March 13, 2025**.

Board members present and voting: Jeff Yates, Mark Montanari, Daryl Baker, Anna Hueston, and Bartlett Harvey.

Following the Public Hearing, at the Planning Board meeting of Thursday, March 13, 2025, the Board voted unanimously (5 to 0) to **recommend** Article 17 as printed in the Town Meeting Warrant, attached.

Signed:

Maren Toohill, AICP
Town Planner

Date Filed with Town Clerk: April 23, 2025

Town Clerk

ARTICLE 17

Planning Board

Zoning Bylaw Amendment: Amend Wetlands and Floodplain Bylaw

[2/3rds vote required]

To see if the Town will vote to amend the Zoning Bylaw of the Town of Littleton by deleting in its entirety, Article XVI, Wetland and Floodplain Regulations, and inserting, in place thereof, the following:

Article XVI Floodplain Regulation.

§ 173-71 Purpose. The purpose of the Floodplain Regulation is to:

- A.** Ensure public safety through reducing the threats to life and personal injury;
- B.** Eliminate new hazards to emergency response officials;
- C.** Prevent the occurrence of public emergencies resulting from water quality, contamination, and pollution due to flooding;
- D.** 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;
- E.** Eliminate costs associated with the response and cleanup of flooding conditions; and
- F.** Reduce damage to public and private property resulting from flooding waters.

§ 173-72 Description of the Floodplain District. The Floodplain District is herein established as an overlay district. The Floodplain District includes all special flood hazard areas within the Town of Littleton's designated as Zone A and AE on the Middlesex Flood Insurance Rate Map (FIRM) dated July 8, 2025, issued by the Federal Emergency Management Agency (FEMA) for the administration of the National Flood Insurance Program. The exact boundaries of the Floodplain District shall be defined by the 1%-chance base flood elevations shown on the FIRM and further defined by the Middlesex 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, Planning Board, Building Commissioner, and Conservation Commission. Within Zone A, where the base flood elevation is not provided on the FIRM, the applicant shall obtain any existing flood elevation data, which shall be reviewed by the Building Inspector or the Board of Appeals for its reasonable use toward meeting the requirements of this chapter.

§ 173-73 Definitions. For the purposes of this chapter, the following terms shall apply:

- A.** **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. [US Code of Federal Regulations, Title 44, Part 59]
- B.** **Floodway and/or Regulatory 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 height. [Base Code, Chapter 2, Section 202]
- C.** **Functionally dependent use.** A use which cannot perform its intended purpose unless it is located or carried

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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]

D. 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]

E. 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 the Massachusetts State Register of Historic Places; or

(4) Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:

(a) By an approved state program as determined by the Secretary of the Interior or

(b) Directly by the Secretary of the Interior in states without approved programs.

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

F. 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 (June 15, 1983), including any subsequent improvements to such structures. New construction includes work determined to be substantial improvement. [Referenced Standard ASCE 24-14]

G. 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.

H. Special Flood Hazard Area (SFHA). 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]

I. 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]

J. 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]

K. 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]

L. Watercourse. The channel and banks of a river, stream, or drainage way and not the adjoining floodplain areas. The flood carrying capacity of a watercourse refers to the flood carrying capacity of the channel.

M. Variance. A grant of relief by the Town of Littleton from the terms of a flood plain management regulation. [US Code of Federal Regulations, Title 44, Part 59]

N. 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(b)(5), (c)(4), (c)(10), (d)(3), (e)(2), (e)(4), or (e)(5) is presumed to be in violation until such time as that documentation is provided. [US Code of Federal Regulations, Title 44, Part 59]

O. Zone A. The one-hundred-year floodplain area where the base flood elevation (BFE) has not been determined. To determine the BFE, use the best available federal, state, local or other data

P. Zone AE. That portion of the one-hundred-year floodplain where the base flood elevation has been determined. (Note that Zone AE replaces Zones A1-A30 on maps created in and prior to 1987.)

§ 173-74 Standards.

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- A. The Floodplain District is established as an overlay district to all other districts. All development in the district, including structural and non-structural activities, whether permitted by right or by Floodplain Permit must be in compliance with Chapter 131, Section 40 of the Massachusetts General Laws, and with all other relevant Federal, State and local laws and regulations, without limit, and with the following:
 - (1) Sections of the Massachusetts State Building Code (780 CMR) which address floodplain and coastal high hazard areas;
 - (2) Wetland Protection Regulations, Department of Environmental Protection (DEP) (currently 310 CMR 10.00);
 - (3) Inland Wetlands Restriction, DEP (currently 310 CMR 13.00);
 - (4) Minimum Requirements for the Subsurface Disposal of Sanitary Sewage, DEP (currently 310 CMR 15, Title 5);
 - (5) 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;
 - (6) Littleton Town Code, Chapter 171 – Wetlands Protection, and associated regulations.

§ 173-75 Procedures and Requirements.

- A. Designation of Community Floodplain Administrator. The Town of Littleton hereby designates the position of Building Commissioner as the official Floodplain Administrator (FPA) for the Town. The FPA responsibilities include:
 - (1) Act on behalf of the community when implementing certain tasks under the National Flood Insurance Program.
 - (2) Implementation and enforcement of floodplain management regulations.
 - (3) Submit a report to the Federal Insurance Administrator concerning the community participation in the Program, including, but not limited to the development and implementation of flood plain management regulations. This report shall be submitted annually or biennially as determined by the Federal Insurance Administrator.
- B. Required Review Process for Activities within Floodplain District. The Town of Littleton requires review of all proposed construction or other Development in the Floodplain District, including new construction or changes to existing buildings or structures, 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. A Floodplain Permit application made on forms furnished by the Building Commissioner shall be required for all such Development within the Floodplain District. The Floodplain Permit application must be accompanied by the following:
 - (1) The project applicant is responsible for providing this form along with a site and project description.
 - (2) All Other Necessary Permits. The proponent shall obtain all local, state and federal permits that will

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be necessary in order to carry out the proposed development in the floodplain overlay district. The proponent must acquire all necessary permits and must demonstrate that all necessary permits have been acquired.

C. Floodway Data.

- (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 Zones AE, along watercourses that have a regulatory floodway designated on the Town's FIRM 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.
- (3) 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.
- (4) In A and 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.

D. Subdivision Proposals. All subdivision proposals and development proposals in the Floodplain District shall be reviewed to assure that:

- (1) such proposals minimize flood damage;
- (2) public utilities and facilities are located & constructed so as to minimize flood damage; and
- (3) adequate drainage is provided.

When proposing subdivisions or other developments greater than 50 lots or 5 acres, whichever is the lesser, the proponent must provide technical data to determine base flood elevations for each developable parcel shown on the design plans.

E. Variances. Floodplain management variance criteria are outlined in Title 44 Code of Federal Regulations (CFR) 60.6.

(1) Variances to Building Code Floodplain Standards

- (a) Variances from the provisions and requirements of the State Building Code shall be filed by the

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applicant in accordance with the required variance procedures of the State Building Code Appeals Board.

- (b)** Following a decision, the applicant shall provide the Building Commissioner with a written and/or audible copy of the State Building Code Appeals Board's portion of the hearing related to the variance, and that the Building Commissioner will maintain this record in the Building Commissioner's files.
- (c)** With any building permit that is granted a variance from the State, the Building Commissioner shall notify the property owner in writing 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.
- (d)** Such notification shall be maintained with the record of all variance actions for the referenced development in the floodplain overlay district.

(2) Variances to local Zoning Bylaws related to community compliance with the National Flood Insurance Program (NFIP).

- (a)** 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.
- (b)** Pursuant to the Zoning Board of Appeals rules and procedures, no variance may authorize a use or activity not otherwise permitted in the district in which the land or structure is located.
- (c)** Petition for variance shall be filed in accordance with the Zoning Board of Appeals rules and procedures.
- (d)** The Zoning Board of Appeals after examining the applicant's hardships shall approve or disapprove a variance request.

 - [1]** The Zoning Board of Appeals 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.

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[2] Such notification shall be maintained with the record of all variance actions for the referenced development in the floodplain overlay district.

[3] Variances shall not be issued by the Zoning Board of Appeals within any designated regulatory floodway if any increase in flood levels during the base flood discharge would result.

F. Notification of watercourse alteration. In a riverine situation, the Building Commissioner or Board of Appeals shall notify the following of any alteration or relocation of a watercourse:

- Adjacent Communities, especially upstream and downstream
- NFIP State Coordinator
- Massachusetts Department of Conservation and Recreation
- NFIP Program Specialist
- Federal Emergency Management Agency, Region I

G. Requirement to submit 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:

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

§ 173-76 Enforcement.

A. Notice of Violation.

(1) The Building Commissioner/Floodplain Administrator shall serve a written notice of Violation of Order to any owner or person responsible for the violation of any requirement under the provisions of this Bylaw, and such notice or order shall direct the immediate discontinuance of the unlawful action, use or condition and the abatement of the violation.

(2) Any violator and/or owner who has been served with a notice shall stop work immediately, except that in ceasing any work or other activity he shall not leave any structure or lot in such a condition as to be a hazard or menace to the public safety, health, and general welfare.

(3) In situations that require remedial action to prevent adverse impacts within the floodplain district, the Town of Littleton, the Building Commissioner, the Board of Health or any of their agents may order the owner or operator of the premises to remedy the violation.

(4) Any person who violates the provisions of this Bylaw may be ordered to restore property to its original condition and take other actions deemed necessary to remedy such violations.

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B. Penalties. Fines and penalties for violations of the Floodplain District Bylaw shall be levied in accordance with the provisions of §173-5 of the Zoning Bylaw.

§ 173-77 Abrogation; Disclaimer of Liability; Severability.

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

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

C. 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.

or take any other action in relation thereto.

[The Federal Emergency Management Agency (FEMA) has adopted new Flood Insurance Rate Map panels and associated Flood Insurance Study for Littleton. Article 17 updates our Floodplain Zoning Bylaw to reference the new maps and to meet current FEMA Floodplain Bylaw standards. Replacing the outdated zoning bylaw regarding “Wetlands and Floodplain Regulations” will continue to make available the national flood insurance program for those Littleton residents who choose to participate. Article 17 would also remove reference to Wetlands, which are fully covered in Town Code Chapter 171 Wetlands Protection administered by the Conservation Commission.]

Motion: Moved and seconded by the Planning Board that the town vote to approve Article 17 as printed in the warrant.

The Planning Board recommends this article.