



Braintree Town Council

ORDER NO: 24 016

DATE FILED: MARCH 19, 2024

REQUEST OF: THE MAYOR

**UPON THE REQUEST OF HER HONOR, THE MAYOR, THE TOWN OF BRAINTREE, THROUGH THE BRAINTREE TOWN COUNCIL, IT IS SO ORDERED:**

To approve Order 24 016 as submitted with Planning Board recommendations.

YEAS: Boericke, Flaherty, Hume, Maglio, Morin, Quilty, Reynolds, Ringius, Ryan

NAYS: NONE

ABSENT: NONE

PASSED IN COUNCIL: APRIL 30, 2024

PRESENTED TO MAYOR: MAY 1, 2024

A True Record, Attest:

5-14-2024  
Date Approved

James M. Casey  
James M. Casey, Town Clerk

Erin V. Joyce  
Erin V. Joyce, Mayor

**SECTION 135-608 FLOODPLAIN PROTECTION DISTRICT**

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

**A. PURPOSE**

The Purpose the Floodplain Protection District is to:

1. Protect the health and safety of persons and property against one-hundred-year-frequency flooding and the hazard of water inundation;
2. Eliminate new hazards to emergency response officials;
3. Control one-hundred-year-frequency flooding and regulate the development of land and the construction of buildings and structures within the district;
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.

**B. DEFINITIONS**

***For the purpose of this Article, the following terms shall have the meanings indicated:***

**CRITICAL FACILITY:** Those facilities for which even a slight chance of flooding could endanger public safety. Critical facilities include the following three categories:

1. Facilities such as liquefied natural gas terminals and facilities which produce and/or store highly volatile, toxic or water-reactive materials.
2. Hospitals, schools, nursing homes and other similar facilities where the safety of the occupants may be threatened by floodwaters.
3. Those facilities which if flooded would cause the loss of irreplaceable public records or cause the loss of, or disruption to, utilities or emergency services.

**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]

**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]

**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]

**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]

**HISTORIC STRUCTURE** is 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: (1) By an approved state program as determined by the Secretary of the Interior or (2) Directly by the Secretary of the Interior in states without approved programs. [US Code of Federal Regulations, Title 44, Part 59]

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]

RECREATIONAL VEHICLE means 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]
5. For the purpose of this definition, snowmobiles, boats, and off-the-road vehicles shall be considered recreational vehicles.

REGULATORY FLOODWAY: See FLOODWAY

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]

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]

STRUCTURE: 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]

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, Massachusetts State Building Code 9<sup>th</sup> Edition.

VARIANCE: 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]

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]

### **C. DEFINITIONS OF FLOOD ZONES**

ZONE A: an area of special flood hazard without water surface elevations determined.

ZONE A1-30 and ZONE AE: areas of special flood hazard with water surface elevations determined

ZONE AH: areas of special flood hazards having shallow water depths and/or unpredictable flow paths between (1) and (3) feet, and with water surface elevations determined

ZONE AO: area of special flood hazards having shallow water depths and/or unpredictable flow paths between (1) and (3) ft. (*Velocity flow may be evident; such flooding is characterized by ponding or sheet flow.*)

ZONE A99: area of special flood hazard where enough progress has been made on a protective system, such as dikes, dams, and levees, to consider it complete for insurance rating purposes. (Flood elevations may not be determined.)

ZONES B, C, AND X: areas of minimal or moderate flood hazards or areas of future-conditions flood hazard. (*Zone X replaces Zones B and C on new and revised maps.*)

ZONE V: area of special flood hazards without water surface elevations determined, and with velocity, that is inundated by tidal floods (coastal high hazard area).

ZONE V1-30 and ZONE VE: area of special flood hazards, with water surface elevations determined and with velocity, that is inundated by tidal floods (coastal high hazard area).

### **D. DISCLAIMER**

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

### **E. SEVERABILITY**

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

### **F. DESIGNATION**

The Town of Braintree hereby designates the position of Director of Planning and Community Development, or their designee within the Department, to be the official floodplain administrator.

### **G. FLOODPLAIN DISTRICT**

1. The Floodplain District is herein established as an overlay district. The District includes all special flood hazard areas within the Town of Braintree designated as Zone A, AE, AH, AO, A99, V, or VE on the Norfolk County

Flood Insurance Rate Map (FIRM) dated July 6, 2021 issued by the Federal Emergency Management Agency (FEMA) for the administration of the National Flood Insurance Program. The exact boundaries of the District shall be defined by the 1%-chance base flood elevations shown on the FIRM and further defined by the Norfolk County Flood Insurance Study (FIS) report dated July 6, 2021, or most recently enacted map as amended. The FIRM and FIS report are incorporated herein by reference and are on file with the Town Clerk, Planning and Community Development Department (Planning Board and Conservation Commission), Department of Municipal License and Inspections, and the Department of Public Works – Engineering Division.

2. In the absence of (1) above and if the SPGA determines that flooding exists the Floodplain Protection District boundary shall be 50 feet from any wetlands as defined in MGL c. 131. Wet meadows, marshes, swamps or bogs that have an area less than 1,000 square feet shall be exempt from this section.
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, current or projected, 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 Zones A, A1-30, 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.
5. In Zones A1-30 and AE, along watercourses that have a regulatory floodway designated on the Town of Braintree'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.
6. Within Zones AO and AH on the FIRM, adequate drainage paths must be provided around structures on slopes, to guide floodwaters around and away from proposed structures.

#### **H. USES**

1. For the purpose of this section, the Floodplain Protection District shall be considered to be overlaid on the other zoning districts.
2. No permit shall be issued for the construction of a critical facility within the special flood hazard areas (SFHAs) and/or five-hundred-year floodplain.
3. In the Floodplain Protection District, no building or structure shall be constructed, improved, altered or modified and no land shall be filled, excavated or otherwise changed in grade except pursuant to a special permit authorized by the SPGA. An alteration to an existing structure which does not affect flood storage or the floodway, as determined by the Planning staff, shall not require a special permit under this section as determined by the Director of Planning and Community Development or the SPGA. The Town of Braintree shall require a Building Permit from the Department of Municipal License and Inspection – Building Division, 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.

4. All new buildings built on fill must be:
  - a) Constructed on properly designed and compacted fill (e.g., ASTM D-698 or equivalent); and
  - b) Fill extends at least five feet beyond the building walls before dropping below base flood elevation; and
  - c) The fill has appropriate protection from erosion and scour.
5. Alteration of sand dunes is prohibited when the alteration would increase potential flood damage.
6. All new construction within Zone VE must be located landward of the reach of mean high tide.
7. All subdivision proposals must be designed 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 to reduce exposure to flood hazards.
8. 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.

#### **I. APPLICATION FOR SPECIAL PERMIT AND EXCEPTIONS**

- 1a. Each applicant for a special permit under this section shall file for a special permit in accordance with the provisions of **Article V** of this chapter and with any rules and regulations as may have been adopted by the SPGA. All applications for special permits shall be processed in accordance with the provisions of Article V of this chapter.
- 1b. Development occurring in any jurisdictional Floodplain areas located in any of the four (4) MBTA Communities Multi-Family Overlay Districts (MCMOD) Section 135-616 shall not be subject to the filing of a Special Permit and will be reviewed for compliance with Section 135-608 as part of the Site Plan Review Process.
2. In addition to the submission requirements stipulated in Article V, the plan(s) submitted shall show:
  - a) The location dimensions and elevation, based on North American Vertical Datum (NAVD 88), of existing and proposed buildings and structures;
  - b) Existing and proposed contours at one-foot intervals of the land based on NAVD datum;
  - c) A contour delineating the one-hundred-year-storm frequency elevation shall be distinctly designated;
  - d) Other information deemed necessary by the SPGA to indicate the complete physical characteristics of the area and the proposed construction and/or grading.

#### **J. CRITERIA FOR APPROVAL.**

The SPGA may issue a Special Permit pursuant to this section provided the SPGA finds that:

1. All structures shall be elevated per the requirements of the most recent version of the MA State Building Code based on the Floodplain Zone designation;
2. The proposed construction and/or change in grade will not derogate from the intent and purpose of the Floodplain Protection District;
3. The proposed construction and/or change in grade will not endanger the health and safety of the public;

4. The proposed construction and/or change in grade shall not obstruct or divert flood flow or reduce natural storage or increase stormwater runoff to the extent of raising the base flood elevation. Written certification of such shall be provided by a registered professional engineer;
5. The proposed system of drainage and sewage disposal shall not cause pollution or otherwise endanger public health;
6. The proposed structures shall be constructed to counteract any buoyancy or water impacts;
7. The proposed construction shall have street or other appropriate vehicular access at least one foot above the base flood elevation.

#### **K. CONDITIONS OF PERMIT**

In granting a Special Permit consistent with uses permitted in the district in which the site is located, The SPGA shall impose conditions designed to:

1. Safeguard the health and safety of occupants of the premises and of other land in and adjacent to the district;
2. Ensure that the requirements of all local, state and federal government agencies that will be necessary in order to carry out the proposed development in the floodplain overlay district have been met regarding, but not limited to, the following:
  - a) Placement of building or structure;
  - b) Type of foundation such as posts with blowout panels;
  - c) Elevation of floors;
  - d) Method of anchoring building to foundation;
  - e) Design of drainage system, including private sewage disposal work;
  - f) Occupancy of Buildings;
  - g) Area and Depth of any excavation of fill;
  - h) All floodproofing methods or proposals.

#### **L. COMPLIANCE WITH OTHER REGULATIONS.**

All development in the district including structural and nonstructural activities whether permitted by right or by special permit must be in compliance with the following (where applicable):

1. 780 CMR, Massachusetts State Building Code, sections of which address floodplain and coastal high hazard areas.
2. 310 CMR 10.00, Wetlands Protection Regulations - Department of Environmental Protection (DEP).
3. 310 CMR 13.00, Inland Wetlands Restriction - DEP.
4. 310 CMR 12.00, Coastal Wetlands Restrictions - DEP.
5. 310 CMR 15, Title 5, Minimum Requirements for the Subsurface Disposal of Sanitary Sewage – DEP.

#### **M. RECREATION VEHICLES**

In A1-30, AH, AE Zones, V1-30, VE and V Zones, all recreation 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.

#### **N. WATERCOURSE ALTERATIONS OR RELOCATIONS IN RIVERINE AREAS.**

In a riverine situation, the Town of Braintree Floodplain Administrator shall notify the following of any alteration or relocation of a watercourse:

1. Adjacent Communities, especially upstream and downstream.
2. Bordering States, if affected.

3. NFIP State Coordinator  
Massachusetts Department of Conservation and Recreation  
251 Causeway Street, 8<sup>th</sup> Floor  
Boston, MA 02114
4. NFIP Program Specialist  
Federal Emergency Management Agency, Region I  
99 High Street, 6<sup>th</sup> Floor  
Boston, MA 02110

**O. VARIANCES TO BUILDING CODE FLOODPLAIN STANDARDS.**

1. The Town of Braintree shall 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 of Braintree 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:
  - a) 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.
  - b) Such construction below the base flood level increases risks to life and property. Such notification shall be maintained with the record of all variance actions for the referenced development in the floodplain overlay district.

**P. VARIANCES TO LOCAL ZONING BYLAWS RELATED TO COMMUNITY COMPLIANCE WITH THE NATIONAL FLOOD INSURANCE PROGRAM (NFIP)**

For the purposes of this Article, Section 135-407 of the Braintree Zoning Bylaw shall not apply. The Town of Braintree Floodplain Administrator may issue Variances from Section 135-608 in accordance with the requirements set forth below. 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;
3. The variance is the minimum action necessary to afford relief.

**Q. REQUIREMENT TO SUBMIT NEW TECHNICAL DATA**

If the Town/City acquires data that changes the base flood elevation in the FEMA mapped Special Flood Hazard Areas, the Town/City 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:

FEMA Region I Risk Analysis Branch Chief  
99 High Street - 6<sup>th</sup> floor  
Boston, MA 02110

Massachusetts NFIP State Coordinator  
MA Dept. of Conservation & Recreation  
251 Causeway Street  
Boston, MA 02114