

Newbury Zoning Bylaw

97-4 Regulations of Overlay Districts

E. Flood Hazard. <https://ecode360.com/15570407>

[Amended 5-22-2012 ATM, Art. 19]

(1) Purpose: The purposes of the Flood Hazard Overlay District are 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;
- (f) Reduce damage to public and private property resulting from flooding waters.

~~(2) Flood Hazard Overlay District Boundaries and Base Flood Elevation Data: The Flood Zone District is herein established as an overlay district. The District includes all special flood hazard areas within the Town of Newbury designated as Zone AE or VE on the Essex 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 Essex County FIRM that are wholly or partially within the Town of Newbury are panel numbers 25009C0114F, 25009C0116F, and 25009C0252F dated July 3, 2012; and panel numbers 25009C0117G, 25009C0118G, 25009C0119G, 25009C0136G, 25009C0137G, 25009C0138G, 25009C0139G, 25009C0141G, 25009C0143G, 25009C0256G, 25009C0257G, 25009C0276G, 25009C0277G and 25009C0281G dated July 16, 2014. The exact boundaries of the District may be defined by the 100-year base flood elevations shown on the FIRM and further defined by the Essex County Flood Insurance Study (FIS) report dated July 16, 2014. The FIRM and FIS report, incorporated herein by reference, shall be kept on file with the Town Clerk, the Planning Board, and Inspectional Services.~~

~~[Amended 5-20-2014 ATM, Art. 21]~~

(2) Use of FEMA maps and supporting studies

The Floodplain District is herein established as an overlay district. The District includes all special flood hazard areas within Newbury designated as Zone A, AE, AO, or VE on the Essex County 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 District shall be defined by the 1%-chance base flood elevations shown on the FIRM and further defined by the Essex 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, Planning Board, Building Commissioner, and Conservation Commission.

(3) Designation of community Floodplain Administrator

The Town of Newbury hereby designates the position of Building Commissioner to be the official floodplain administrator for the Town.

(4) Permits are required for all proposed development in the Floodplain Overlay District

The Town of Newbury 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.

(5) Assure that all necessary permits are obtained

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 must demonstrate that all necessary permits have been acquired.

(3) (6) In all Zones VE. The following Subsections shall be applicable in all districts of the Town which are classified on the FIRM as being within Zone VE (coastal high hazard area):

(a) With respect to all new or substantially improved structures, the application and plans for the building permit shall provide the elevation (in relation to mean sea level) of the lowest horizontal structural member of the lowest floor (excluding pilings and columns) and whether or not such structures contain a basement and, if the structure is to be or has been flood-proofed, provide the elevation (in relation to mean sea level) to which the structure is or has been flood-proofed;

(b) All new construction shall be located landward of the reach of mean high tide;

~~(e)~~(c) The use of fill for structural support of buildings or other structures shall be prohibited;

~~(f)~~ The placement of manufactured homes shall comply with the requirements of NFIP Floodplain Management Regulations 44 CFR 60.3(e);

~~(g)~~(d) Man-made Human alterations of sand dunes and/or mangrove stands which would increase potential flood damage shall be prohibited;

~~(h)~~ The provisions of § 97-4.E.(4) through § 97-4.E.(12) inclusive, including all subsections thereof, shall be applicable in all districts of the Town which are classified as being within Zone VE on the Federal Emergency Management Agency's Essex County FIRM effective July 3, 2012 and July 16, 2014.[Amended 5-20-2014 ATM, Art. 21]

(4) In all Zones AE. The following Subsections shall be applicable in all districts of the Town which are classified on the FIRM as being within Zone AE:

(a) Along watercourses that have a regulatory floodway designated on the FIRM encroachments are prohibited in the regulatory floodway which would result in any increase in flood levels within the community during the occurrence of the base flood discharge.

~~(5)~~ **(7)** In all Zones AO. Within all districts in the Town which are classified on the FIRM as being within Zone AO, adequate drainage paths must be provided around structures on slopes, to guide floodwaters around and away from proposed structures.

~~(6)~~ **(8)** The provisions of this sub-section shall apply in all districts in the Town which are classified as being within unnumbered A Zones, Zones AE, Zones AO, and Zones VE.

~~(a)~~ All proposed developments shall be reviewed to assure that all necessary permits have been received from those governmental agencies from which approval is required by Federal or State law, including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334.;

~~(b)~~ **(a)** All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and all new and replacement sanitary sewerage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters and on-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

~~(c)~~ **(b)** All the provisions of § 97-4.E.(4) and all subsections thereof shall apply in any unnumbered A Zone on the FIRM. **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.**

(c) There shall be obtained, reviewed and reasonably utilized any base flood elevation data available from a Federal, State or other source as criteria for requiring that all new construction and substantial improvements of residential structures have the lowest floor (including basement) elevated to or above the base flood level and all new construction and substantial improvements of non-residential structures have the lowest floor (including basement) elevated or flood-proofed to or above the base floor level. The Building Inspector shall obtain the elevation (in relation to mean sea level) of the lowest habitable floor (including basement) of all new or substantially improved structures, obtain, if the structure had been flood-proofed, the elevation to which it has been flood-proofed, and shall maintain a record of all such information.

~~(e)~~ **(d)** All subdivision proposals must be designed to assure that:

01) Such proposals minimize flood damage;

02) All public utilities and facilities are located and constructed to minimize or eliminate flood damage; and

03) Adequate drainage is provided to reduce exposure to flood hazards.

(e) 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.

(f) Existing contour intervals of site and elevations of existing structures may be required to be included on plan proposal.

~~(g) The placement of manufactured homes and recreational vehicles shall be in compliance with NFIP Flood Plain Management Regulations 44 CFR 60.3(c).~~ **In A1-30, AH, AE Zones, V1-30, VE, and V 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) Texts and maps may be inspected at the Town Hall, 25 High Road, Newbury, Massachusetts.~~

~~(7)~~ **(9)** Reference to Existing Regulations:

(a) The Flood Hazard 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 special permit must be in compliance with Chapter 131, Section 40 of the Massachusetts General Laws and with the following:

- Sections of the Massachusetts State Building Code (780 CMR) which address floodplain and coastal high hazard areas;
- Wetlands Protection Regulations, Department of Environmental Protection (DEP) (currently 310 CMR 10.00)
- Inland Wetlands Restriction, DEP (currently 310 CMR 13.00)
- Coastal Wetlands Restriction, DEP (currently 310 CMR 12.00)
- Minimum Requirements for the Subsurface Disposal of Sanitary Sewage, DEP (currently 310 CMR 15, Title 5);

(b) More restrictive regulations to apply. Where the flood zone regulations set forth in § 97-4.E., including all sections thereof, impose greater or lesser restrictions or requirements than those of other applicable By-Laws or regulations, whether Federal, State or local, the more restrictive restrictions or requirements shall be applicable.

~~(8)~~ **(10)** Floodway provisions. In the regulatory floodway designated on the FIRM the following provisions shall apply:

(a) All encroachments, including fill, new construction, substantial improvements to existing structures, and other development are prohibited unless it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed encroachment shall not result in any increase in flood levels within the community during the occurrence of the base flood discharge;

(b) Notwithstanding the above, encroachments within the adopted regulatory floodway that would result in an increase in base flood elevations may **only** be permitted provided that the

Town submits an application for a conditional FIRM and floodway revisions in accordance with the provisions of 44 CFR 65.12 and receives the approval of the Federal Insurance Administrator.

(c) Any encroachment meeting the above standard shall comply with the floodplain requirements of the State Building Code;

(d) 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.

~~(4) (7) In all Zones AE. The following Subsections shall be applicable in all districts of the Town which are classified on the FIRM as being within Zone AE:~~

(9) (11) Flood Hazard Overlay District Variances.

(a) The Permit Granting Authority may grant a variance from the requirements of § 97-4.E, including all sections thereof, subject to the requirements of Massachusetts General Laws, Chapter 40A, § 97-11.B of this By-Law and upon the following conditions and restrictions:

01) Variances may be issued for the reconstruction, rehabilitation or restoration of structures listed on the National Register of Historic Places or on a State Inventory of Historic Places without regard to the procedures hereinafter set forth;

02) No variance shall be issued within any designated regulatory floodway if any increase in flood levels during the base flood discharge would result;

03) Variances may be issued only for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level;

04) Variances shall only be issued upon a showing of good and sufficient cause, a determination that failure to grant the variances would result in exceptional hardship to the applicant and a determination that the granting of a variance would not result in increased flood heights, additional threats to public safety, extraordinary public expenses, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances, other than the provisions of § **97-4E**, together with all sections thereof, of this By-Law;

05) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford the relief requested;

06) The Permit Granting Authority shall notify the applicant for a variance in writing over the signature of the Chairman of the Permit Granting Authority that 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 \$25.00 for \$100.00 of insurance coverage and such construction below the base flood level increased risks to life and property. Such notification shall be maintained with the records of all variance actions maintained pursuant to requests for variances from the provisions of § **97-4E**, together with all sections thereof.

~~(10)~~**(12)** Permitted Uses: The following uses of low flood damage potential and causing no obstructions to flood flows are encouraged provided they are permitted in the underlying district and they do not require permanent structures, fill, or storage of materials or equipment:

- (a)** Agricultural uses such as farming, grazing, truck farming, horticulture, etc.;
- (b)** Forestry and nursery uses;
- (c)** Outdoor recreational uses, 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.

~~(11)~~**(13)** In a riverine situation, the Town of Newbury Conservation Agent shall notify the following of any alteration or relocation of a watercourse:

- Adjacent Communities
- NFIP State Coordinator
Massachusetts Dept. of Conservation and Recreation
~~251 Causeway Street, Suite 600-700~~
~~Boston, MA 02114-2104~~
- NFIP Program Specialist
Federal Emergency Management Agency, Region I
~~99 High Street, 6th Floor~~
~~Boston, MA 02110~~

14. 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, Newbury 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

15. Variances to building code floodplain standards

Newbury 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.

Newbury 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.

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

(12) (16) Definitions: As used in this section, the following words and terms shall have the following meanings:

Alter: To change the condition of any Area Subject to Protection under G.L. c. 131, § 40.

Examples of alterations include, but are not limited to, the following:

(a) the changing of pre-existing drainage characteristics, flushing characteristics, salinity

distribution, sedimentation patterns, flow patterns and flood retention areas;

(b) the lowering of the water level or water table;

(c) the destruction of vegetation;

(d) the changing of water temperature, biochemical oxygen demand (BOD), and other physical, biological or chemical characteristics of the receiving water.

Area of Special Flood Hazard: 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 be designated as Zone A, AO, AH, A1-30, AE, A99, V1-30, VE, or V.

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

Coastal High Hazard Area: An area of special flood hazard extending from offshore to the inland limit of a primary frontal dune along an open coast and any other area subject to high velocity wave action from storms or seismic sources. The area is designated on a FIRM as Zone V, V1-30, VE.

Development: Any manmade 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].

District: Floodplain district.

Federal Emergency Management Agency (FEMA): The Agency which administers the National Flood Insurance Program. FEMA provides a nationwide flood hazard area mapping study program for communities as well as regulatory standards for development in the flood hazard areas.

Flood Boundary and Floodway Map: An official map of a community issued by FEMA that depicts, based on detailed analyses, the boundaries of the 100-year and 500-year floods and the 100-year floodway. (For maps done in 1987 and later, the floodway designation is included on the FIRM.)

Flood Hazard Boundary Map (FHBM): An official map of a community issued by FEMA the Federal Insurance Administrator where the boundaries of the flood and related erosion areas having special hazards have been designated as Zone A or E.

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.

Flood Insurance Study: An examination, evaluation, and determination of flood hazards, and, if appropriate, corresponding water surface elevations, or an examination, evaluation and determination of flood-related erosion hazards.

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 more than a designated height.

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]

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]

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:

(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]

Lowest Floor: The lowest floor of the lowest enclosed area (including basement or cellar). 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, PROVIDED that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of NFIP Regulations 60.3.

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.

Manufactured Home Park or Subdivision: A parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

New Construction: For floodplain management purposes, structures for which the "start of construction" commenced on or after the effective date of a floodplain management regulation adopted by a community, including any subsequent improvements to such structures. New construction includes work determined to be substantial improvement. For the purpose of determining insurance rates, **New Construction** means structures for which the "start of construction" commenced on or after the effective date of an initial FIRM or after December 31, 1974, whichever is later.

One-Hundred Year Flood: See **Base Flood**.

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]

Regulatory Floodway: See **Floodway**.

Special Flood Hazard Area: ~~An area having special flood and/or flood-related erosion hazards, and shown on an FHBM or FIRM as Zone A, AO, A1-30, AE, A99, AH, V, V1-30, VE.~~ 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: 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. **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 manufactured home on foundation. For the latter purpose, the term includes a building while 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.

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 fifty (50) percent of the market value of the structure before the damage occurred.

Substantial Improvement: Any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds fifty (50) percent 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.

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]

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]

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]

Zone A1-30 and Zone AE (for new and revised maps): The 100-year floodplain where the base flood elevation has been determined.

Zone AH and Zone AO: The 100-year floodplain with flood depths of one (1) to three (3) feet, where a clearly defined channel does not exist, where the path of flooding is unpredictable, and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

Zone B, C, and X: Areas identified in the community Flood Insurance Study as areas of moderate or minimal flood hazard. Zone X replaces Zones B and C on new and revised maps.

Zone V1-30 and Zone VE (for new and revised maps): A special flood hazard area along a coast subject to inundation by the 100-year flood with additional hazards due to velocity (wave action). Base flood elevations have been determined.

18. Disclaimer of liability

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

19. Severability section

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