



City of Leominster

Office of the City Clerk

25 West Street, Room 5
Leominster, MA 01453
Tel (978) 534-7500 ext. 1175

To the Honorable City Council:
The Undersigned Petition your Honorable Body to

Amend the zoning ordinance pertaining to the Floodplain. See attached letter.

PETITIONER'S NAME (PRINTED):	Elizabeth Wood (On Behalf of Planning Board)
PETITIONER'S SIGNATURE:	
ADDRESS:	25 West Street
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John Souza, Chair

Carol Vittorioso, Vice Chair

Elizabeth Wood, Director

Office of The Planning Board

City of Leominster, Massachusetts

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January 5, 2021

Katelyn Huffman
City Clerk
25 West Street
Leominster, MA 01453

RE: Amend Article VI Section 22-34: Special Districts Regulations: Floodplain

The Leominster Planning Board wishes to submit a petition at the suggestion of Joy Duperault, Director Flood Hazard Management Program, State NFIP Coordinator & Deputy Hazard Mitigation Officer, to amend the Leominster Zoning Ordinance. Together with Angela Chebuske, Conservation Agent, I have produced a draft of suggested edits to our ordinance based on Ms. Duperault's recommendation.

The amendments are required as to bring the Leominster Zoning Ordinance into compliance with Federal Standards.

Refer to the attached draft for the proposed amendments.

Please feel free to contact me if you have any questions or if you need more information.

Sincerely,

Elizabeth Wood, AICP
Planning & Development Director

Attachment: 12/21/2020 Draft of Proposed Floodplain language

cc: Mayor Dean Mazarella
John Souza, Planning Board Chair
Carol Vittorioso, Planning Board Vice Chair
Angela Chebuske, Conservation Agent

Highlighted sections indicated newly inserted language.

Article VI: Special Districts Regulations

Section 22-34. Floodplain District (FP)

34.1 Purpose:

- 34.1.1 Protect human life and property from the hazards of periodic flooding;
- 34.1.2 Preserve the natural flood control characteristics, and the flood storage capacity of the floodplain;
- 34.1.3 Ensure proper floodplain management consistent with criteria established by the National Flood Insurance Program;
- 34.1.4 Preserve and maintain the ground water table and water recharge areas within the floodplain;
- 34.1.5 Take into account floodplain management programs of neighboring areas;
- 34.1.6 Eliminate new hazards to emergency response officials;
- 34.1.7 Prevent the occurrence of public emergencies resulting from water quality, contamination, and pollution due to flooding;
- 34.1.8 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;
- 34.1.9 Eliminate costs associated with the response and cleanup of flooding conditions.

34.2 Disclaimer of Liability

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

34.3 Severability

- 34.3.1 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.

34.4 Use of FEMA Maps and supporting studies

- 34.4.1 The Floodplain (FP) District is herein established as an overlay district. The District includes all special flood hazard areas designated on the City of Leominster's Flood Insurance Rate Map (FIRM) and Flood Boundary & Floodway Map (FBFM) issued by the Federal Emergency

Management Agency for the administration of the National Flood Insurance Program, dated April 3, 1989. These maps indicate the 1%-chance regulatory floodplain. 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 Flood Insurance Study (FIS) report dated April 3, 1989. The effective FIRM, FBFM, and FIS report are incorporated herein by reference and can be found at the Clerks Department, Building Department, Planning & Development Department, and Conservation Department.

34.5 The City of Leominster hereby designates the position of Principal Building Clerk to be the official floodplain administrator for the City.

34.7 Special Permit

34.7.1 Special Permits are to be issued by the Planning Board.

34.7.2 All other zoning districts within the confines of the Floodplain District remain in force as specifically allowed and described in other sections of this Ordinance. Said other zoning districts are subject also to the further requirements of this section.

34.7.3 Special Permit/Site Plan

34.7.3.1 The **Planning Board**, in accordance with [M.G.L. Chapter 40A, Section 9](#), may issue a Special Permit hereunder, subject to other applicable provisions of this Ordinance, if the application is compliant with the following provisions:

34.7.3.2 The applicant has submitted adequate information upon which to base a decision, including, but not limited to:

34.7.3.2.1 A Site Plan prepared by a Massachusetts registered professional engineer showing the proposed activity, existing and proposed topography at two (2) foot contour intervals and;

34.7.3.2.2 Lowest floor elevations of any new or expanded building;

34.7.3.2.3 Certification by a Massachusetts registered professional engineer or architect that the proposed use, structure, building, encroachment, improvement, development, dumping, filling, excavation or transfer will not result in any increase in the flood level during the occurrence of the 100-year flood discharge;

34.7.3.2.4 Meets the minimum standards set forth in the National Flood Insurance Program rules and regulations.

34.7.3.1 The applicant has demonstrated that the project will not encroach upon the regulatory floodway so as to result in any increase in flood levels within the community during the occurrence of the base flood discharge;

34.7.3.2.3 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.

34.7.3.2.4 In Zones A1-30 and AE, along watercourses that have a regulatory floodway designated on the City's FIRM or Flood Boundary & Floodway Map 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.

37.7.3.2 If the applicant proposes to relocate or alter a water course, or if the City acquires data that changes the base flood elevation in the FEMA mapped Special Flood Hazard Areas, the City, within 6 months, shall notify FEMA of these changes by submitting the technical or scientific data that supports the change(s). Notification shall be submitted prior to or at the time of application; written notification by certified mail to:

34.7.3.2.1 Adjacent downstream and upstream communities;

34.7.3.2.2 NFIP State Coordinator, MA Department of Conservation and Recreation, 251 Causeway St., Suite 600-700, Boston, MA 02114-2104, and;

34.7.3.3.3 NFIP Program Specialist, FEMA Region I, 99 High St., 6th Floor, Boston, MA 02110

34.7.3.4 Within ten (10) days of receipt of the application, the **Planning Board** shall transmit one (1) copy of the development plan to the Conservation Commission, Department of Public Works, Board of Health and Director of Inspections. Final action may not be taken until reports have been received from the above boards or until thirty-five (35) days have elapsed from the date of transmittal to such boards, and

34.7.3.5 The **Planning Board** may specify such additional requirements and conditions as it finds necessary to protect the health, safety, and welfare of the public and the occupants of the proposed use.

34.8 Subdivisions/Development Proposals

34.8.1 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.

34.8.2 All subdivision proposals must be designed to assure that:

34.8.2.1 Such proposals minimize flood damage;

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

34.8.2.3 Adequate drainage is provided to reduce exposure to flood hazards.

34.8.3.4 The burden of proof is the applicant's responsibility.

34.9 Allowed Uses: See [Article III](#).

34.9.1 Within those areas designated as a floodplain on the FBFM, the following uses of low flood damage potential and causing no obstruction to flood flows are allowed provided they are permitted in the underlying district and they do not require structures, fill or storage of materials or equipment:

34.9.1.1 Agricultural uses such as farming, grazing, truck farming, horticulture, etc.;

34.9.1.2 Forestry and nursery uses;

34.9.1.3 Fishing, boating;

34.9.1.4 Conservation of water, plants, wildlife;

34.9.1.5 Wildlife management areas, foot, bicycle and/or horse paths;

34.9.1.6 Temporary nonresidential structures used in connection with fishing, growing, harvesting, storage, or sale of crops raised on the premises; and

34.9.1.7 Playgrounds

34.9.2 Other than as permitted by Subsection 22-34.9, no use, structure, building, encroachment, improvement or development may be erected, constructed, improved, created or moved. No earth or other materials may be dumped, filled, excavated, or transferred, within those areas designated as a floodway on the FBFM or as Zone A, Zone AO, Zone AH, Zone AI through A30, or Zone A99 on the FIRM, without first obtaining a Special Permit from the **Planning Board**.

34.9.3 See [Article III](#) for additional use regulations.

34.10 Dimensional Regulations: See [Article VII](#).

34.11 Performance Standards

34.11.1 All development, including structural and nonstructural activities, whether permitted by right or by Special Permit, must be in compliance with M.G.L. [Chapter 131, Section 40](#) and with the requirements of the Massachusetts [State Building Code](#) pertaining to construction in the floodplains. Whenever the requirements of this section differ from those prescribed in other laws, Ordinances and codes, those requirements designed to reduce flood losses take precedence.

34.11.2 See [Article VIII](#) for additional performance standards.

34.12 Other:

34.12.1 Parking: See [Article IX](#).

34.12.2 Signs: See [Article XIII](#).

34.12.3 Site Plan: See [Article XI](#).

34.13 Variances to Floodplain Standards

34.13.1 Variances to Building Code Floodplain Standards

34.13.1.1 The City 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 City's files. The City 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.

34.13.2 Variances to local Zoning Ordinances related to community compliance with the National Flood Insurance Program (NFIP);

34.13.2.1 A variance from these floodplain ordinances must meet the requirements set out by State law, and may only be granted if:

34.13.2.1.1 Good and sufficient cause and exceptional non-financial hardship exist;

34.13.2.1.2 The variance will not result in additional threats to public safety, extraordinary public expense, or fraud or victimization of the public, and;

34.13.2.1.3 The variance is the minimum action necessary to afford relief.

34.14 Permits are required for all proposed development in the Floodplain Overlay District

34.14.1 The City of Leominster 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.

34.15 Assure that all other necessary permits are obtained

34.15.1 The City of Leominster's permit review process includes the use of a checklist of 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 submit the completed checklist demonstrating that all necessary permits have been acquired.

34.16 Unnumbered A Zones

34.16.1 In A Zones, in the absence of FEMA BFE data and floodway data, the building department will obtain, review and reasonably utilize base flood elevation and floodway data available from a Federal, State, or other source as criteria for requiring new construction, substantial improvements, or other development in Zone A 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.

34.17 Section Omitted.

34.18 Section Omitted.

34.19 AO and AH zones drainage requirements

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.

34.20 Recreational vehicles

34.20.1 In A1-30, AH, 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.

34.20 Floodplain Definitions Section

The definitions listed below pertain only to Section 22-34, Floodplain District.

34.20.1 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]

34.20.2 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]

- 34.20.3 **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]
- 34.20.4 **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]
- 34.30.5 **Historic Structure.** Any structure that is:
- 34.30.5.1 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;
- 34.30.5.2 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;
- 34.30.5.3 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
(d) Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
- 34.30.5.3.1 By an approved state program as determined by the Secretary of the Interior or;
- 34.30.5.3.2 Directly by the Secretary of the Interior in states without approved programs.
[US Code of Federal Regulations, Title 44, Part 59]
- 34.30.6 **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]
- 34.30.7 **Recreational Vehicle:** A vehicle which is: Built on a single chassis; 400 square feet or less when measured at the largest horizontal projection; designed to be self-propelled or permanently towable by a light duty truck; and 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]
- 34.30.8 **Regulatory Floodway.** -- See FLOODWAY.

- 34.30.9 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]
- 34.30.10 Start of Construction. The date of issuance for new construction and substantial improvements to existing structures, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement or other improvement is within 180 days after the date of issuance. The actual start of construction means the first placement of permanent construction of a building (including a manufactured home) on a site, such as the pouring of a slab or footings, installation of pilings or construction of columns.
- 34.30.10.1 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]
- 34.30.11 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]
- 34.30.12 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]
- 34.30.13 Variance. A grant of relief by a community from the terms of a floodplain management regulation. [US Code of Federal Regulations, Title 44, Part 59]
- 34.30.14 Violation. The failure of a structure or other development to be fully compliant with the community's floodplain 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]