

SECTION 8.0 SPECIAL DISTRICTS

8.1 FLOOD PLAIN OVERLAY DISTRICT (FPOD)

8.1.1 Purpose. The purpose of the Flood Plain Overlay District (FPOD) is to:

1. Ensure public safety through reducing the threats to life and personal injury;
2. Eliminate new hazards to emergency response officials;
3. Prevent the occurrence of public emergencies resulting from water quality, contamination, and pollution due to flooding;
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;
5. Eliminate costs associated with the response and cleanup of flooding conditions;
6. Reduce damage to public and private property resulting from flooding waters.

8.1.2 Existing Regulations. All development on the district including structural and non-structural activities whether permitted by right or by Special Permit must be in compliance with the following:

1. 780 CMR, of the Massachusetts State Building Code which addresses flood plain and coastal high hazard areas;
2. 310 CMR 10.00, Wetlands Protection Regulations, Department of Environmental Protection (DEP);
3. 302 CMR 6.00, Inland Wetlands Restriction, (DEP);
4. 310 CMR 15, Title 5, Minimum Requirements for the Subsurface Disposal of Sanitary Sewage, (DEP);

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.

8.1.3 Definitions.

Area of special flood hazard is the land in the flood plain 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, AL-30, AE, or A99.

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

Development means 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.

District means Flood Plain Overlay District.

Federal Emergency Management Agency (FEMA) 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 hazard boundary map (FHBM) means an official map of a community issued by FEMA where the boundaries of the flood have been designed as Zone A.

Flood insurance rate map (FIRM) means 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 means an examination, evaluation and determination of flood hazards, and, if appropriate, corresponding water surface elevations.

Flood way means the channel of a river or other water course and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation.

Lowest floor means 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 means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. For flood plain management purposes the term "manufactured home" also includes park trailers, travel trailers and other similar vehicles.

Manufactured home park or Subdivision means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

New construction means structures for which the "start of construction" commenced on or after the effective date of a flood plain management regulation adopted by a community.

One-hundred-year-flood - see Base Flood.

Regulatory flood way - see Flood way.

Special flood hazard area means an area having special flood and/or flood-related erosion hazards, and shown on an FHBM or FIRM as Zone A, AO, AL-30, AE, A99, AH.

Structure means, for flood plain 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.

Substantial improvement means any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds 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.

Zone A means the 100-year flood plain 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.

Zone A1-A30 and **Zone AE** means the 100-year flood plain where the base flood elevation has been determined.

Zone AH and **AO** means the 100-year flood plain with flood plain depth of 1 to 3 feet.

Zone A99 means areas to be protected from the 100-year flood by federal flood protection system under construction. Base flood elevations have not been determined.

8.1.4 FPOD Boundaries and Base Flood Elevation Data. The FPOD is herein established as an overlay district. The FPOD includes all special flood hazard areas designated on the Becket Flood Insurance Rate Map (FIRM) or Flood Hazard Boundary Map (FHBM) (select whichever map FEMA has issued for the community) issued by the Federal Emergency Management Agency (FEMA) for the administration of the NFIP dated August 27, 1990 as Zone A, AE, AH, AO, AL-30, A99, which indicate the 100-year regulatory flood plain. The exact boundaries of the district may be defined by the 100-year base flood elevations shown on the FIRM or FHBM and further defined by the Flood Insurance Study booklet dated August 27, 1990. The FIRM and FHBM and Flood Insurance Study booklet are incorporated and are on file with the Town Clerk, Planning Board, Building Official, and Conservation Commission.

1. In Zone A, the best available Federal, State, Local or other flood way data shall be used to prohibit encroachment in flood ways which would result in any increase in flood levels within the community during the occurrence of the base flood discharge in Zone AL-30 and AE, along water courses, no new construction, substantial improvement, or other development shall be permitted, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood.

8.1.5 Use Regulations. All development, including structural and non-structural activities, whether permitted by right or by Special Permit must be in compliance with G. L. c. 131 § 40 and with the requirements of the Massachusetts State Building Code pertaining to construction in flood plains. The following uses of low flood damage potential and causing no obstructions to flood flows are permitted if allowed in the underlying district and they do not require structures, fill, or storage of materials or equipment:

1. Agricultural uses such as farming, grazing, truck farming, horticulture, etc.;
2. Forestry and nursery uses;
3. Outdoor recreational uses, including fishing, boating, play areas, etc.;
4. Conservation of water, plants, wildlife;
5. Wildlife management areas, foot, bicycle and/or horse paths;
6. Temporary non-residential structures used in connection with fishing, growing, harvesting, storage, or sale of crops raised on the premises;
7. Buildings lawfully existing prior to the adoption of these provisions.

8.2 ADULT ENTERTAINMENT

8.2.1 Purpose. The purpose of the Adult Entertainment Bylaw is to address and mitigate the secondary effects, including crimes against property, prostitution, disorderly conduct and the like of the Adult Entertainment uses and businesses referenced herein. The provisions of this section are not intended to impose a limitation or restriction on the content of any communicative matter or materials, including sexually oriented matter or materials. The provisions of this subsection are not intended to restrict or deny access by adults to Adult Entertainment uses or to sexually oriented matter or material protected by the Constitution of the United States of America or by the Commonwealth of Massachusetts, nor to restrict or deny rights that distributors or exhibitors of such matter or materials may have to sell, rent, distribute or exhibit such matter or materials. Neither is it the purpose of this subsection to legalize the sale, rental, distribution or exhibition of obscene or other illegal matter or materials.

8.2.2 Definitions.

Adult Bookstore: An establishment having as a substantial or significant portion of its stock in trade, books, magazines and other matter which are distinguished or characterized by their emphasis depicting, describing or relating to sexual conduct or sexual excitement as defined in G. L. c. 272 §31 (statute defining items related to sexual conduct, excitement or obscenity).

Adult Live Entertainment Establishment: Any establishment, including but not limited to a nightclub, bar, restaurant, tavern, dance hall, stage or other performance venue, which displays live entertainment, including but not limited to persons or entertainers appearing in a state of nudity or other live performance distinguished by an emphasis on depicting, describing or relating to sexual conduct or sexual excitement as defined in G. L. c. 272, §31.

Adult Live Nudity Establishment: Any establishment which provides live entertainment for its patrons, which includes the display of nudity, as that term is defined in G. L. c. 272 §31.

Adult Motion Picture Theater: An enclosure or building, or any portion thereof, used for presenting visual media material distinguished by an emphasis on matter depicting, describing or relating to sexual conduct or sexual excitement as defined in G. L. c. 272, § 31.

Adult Paraphernalia Store: An establishment having as a substantial or significant portion of its stock devices, objects, tools or toys which are distinguished or characterized by their association with sexual activity, including sexual conduct or sexual excitement as defined in G. L. c. 272 § 31.

Adult Video Store: An establishment having as a substantial or significant portion of its stock in trade, videos, movies or other film material which are distinguished or characterized by their emphasis depicting, describing or relating to sexual conduct or sexual excitement as defined in G. L. c. 272 §31.

Adult Store: an establishment having as a substantial or significant portion of its stock in trade, books, magazines, videos, movies, devices, objects, tools, toys or other materials which are distinguished or characterized by their emphasis depicting, describing or relating to sexual

conduct or sexual excitement as defined in G. L. c. 272, §31.

Adult Entertainment Use: For the purposes of this by-law, Adult Entertainment Use shall be defined as any of the following: Adult Bookstore, Adult Live Entertainment Establishment, Adult Live Nudity Establishment, Adult Motion Picture Theater, Adult Paraphernalia Store, Adult Video Store, and or any other business or establishment characterized by an emphasis depicting, describing or related to sexual conduct or excitement as defined in G. L. c. 272 §31.

8.2.3 Applicability

All Adult Entertainment Uses as defined in subsection 8.2.2 are allowed upon the issuance of a Special Permit from the Planning Board. All Adult Entertainment Uses shall comply with the following requirements:

1. No Adult Entertainment Use establishment shall be located within 1,000 feet of the following designated areas:
 - a. the nearest property line of any residence; or
 - b. any establishment licensed under the provisions of G. L. c. 138 §12 (statute relating to licensing the sale of alcoholic beverages).

The distances specified above in 8.2.3.1 shall be measured by a straight line from the location of the proposed Adult Entertainment Use structure to the nearest property line of the designated uses specified in 8.2.3.1.a and 8.2.3.1.b.

2. No Adult Entertainment Use establishment shall be located on parcels where the nearest property line is within 1,000 feet of the following designated areas:
 - a. the nearest property line of any public or private school or municipally owned property;
 - b. the nearest property line of any land used for religious purposes;
 - c. the nearest property line of any public park, playground or other public recreation facility and any principal or accessory private recreational facility use, including but not limited to camps;
 - d. the nearest property line of any child care facility, adult day care facility, family day care facility (large or small), hospital, sanitarium, nursing home, rest home, convalescent home, orphanage or continuing care facility; or
 - e. the nearest property line of any other Adult Entertainment Use establishment except that multiple Adult Entertainment Uses may be allowed in the same structure provided they are owned by the same owner;

The distances specified in 8.2.3.2 shall be measured by a straight line from the nearest

property line of the premises on which the proposed Adult Entertainment Use is to be located to the nearest property line of the designated uses set forth in 8.2.3.2.a. through 8.2.3.2.e.

3. No Adult Entertainment Use establishment shall be located within parcels where the nearest property line is within 1000 feet of State Route 8 or US Route 20.

The distances specified above in 8.2.3.3 shall be measured by a straight line from the nearest property line of the premises on which the proposed Adult Entertainment Use is to be located to the road line of the roads designated in 8.2.3.3.

8.2.4 Special Permit Submittal Requirements

In addition to the submittal requirements for a Special Permit as detailed in subsection 9.3, Special Permit applications for approval under this subsection shall contain the following additional information:

- a. Name and address of the legal owners of the establishment and the property, as well as the manager of the proposed establishment;
- b. Name and address of all persons having a lawful ownership, equity or security interest in the proposed establishment;
- c. A sworn statement that neither the applicant, owner, nor any person having a lawful ownership, equity or security interest in the proposed establishment has been convicted of violating the provisions of G. L. c.119 §63 (inducing or abetting delinquency of a child) or G. L. c. 272 §28 (matter harmful to minors, etc.) or any felony conviction;
- d. Proposed security precautions;
- e. The external and internal physical layout of the premises; and
- f. Full description of the intended nature of the business;

8.2.5 Special Permit Standards for Adult Entertainment Uses

1. No Special Permit may be granted by the Planning Board for an Adult Entertainment Use unless the following conditions are satisfied:
 - a. Display Conditions: Signs shall comply with Section 5 except that no signs, graphics, pictures, publications, videotapes, movies, covers, merchandise or other implements, items or advertising, depicting, describing or relating to sexual conduct or sexual excitement as defined in G. L. c. 272, § 31 shall be displayed in the windows of, or on the building of, any Adult Entertainment Use establishment, or be visible to the public from the pedestrian sidewalks or walkways or from other areas outside such establishments.
 - b. Screening: All building openings, entries and windows shall be screened in such a manner as to prevent visual access of the public to the interior of the Adult Entertainment Use establishment.
 - c. A five (5) foot high solid fence or a landscaped buffer of evergreen trees or shrubs five (5) foot high at the time of planting shall be provided and maintained along the side and

rear property lines. The Special Permit Granting Authority may require additional screening.

- d. All Adult Entertainment Uses shall have a maximum gross floor area of 3,000 square feet.
- e. Not more than one structure to be used for an Adult Entertainment Use establishment shall be located on any one lot.
- f. No Adult Entertainment Use establishment shall be allowed to disseminate adult matter to minors, cause Adult Entertainment Use displays to be viewed by minors, or allow minors to linger on the premises.
- g. No Adult Entertainment Use shall be allowed within a building containing other retail, consumer services or residential uses or be used as an accessory use or accessory structure as defined in these By-laws.
- h. Parking for proposed Adult Entertainment Uses must be located in the front or side of the building. All parking areas shall be illuminated and such illumination shall be contained within the subject property lines.
- i. No Adult Entertainment Use shall have any flashing lights visible from outside the establishment. In addition, the maximum permitted sound level shall not exceed 50 decibels (dB(A)) as measured at any point beyond the boundary line of the lot where the use is located.
- j. Applicant Conditions: No Special Permit shall be issued to any person convicted of violating the provisions of G. L. c. 119, § 63 or G. L. c. 272, § 28 or any felony conviction.

8.2.6 Condition of Approval

1. Special Permits shall be granted for Adult Entertainment Uses only upon determination by the Special Permit Granting Authority that the location and design of the facility are in harmony with its surroundings, and that adequate safeguards exist through licensing or other means to assure on a continuing basis that activities therein will not be patently contrary to prevailing standards of adults in the community and will not involve minors in any way.
2. In approving a Special Permit, the Special Permit Granting Authority may attach such conditions, limitations and safeguards as are deemed necessary to protect the immediate area and the Town, provided however that no such conditions in fact prohibit the use of the property for the use intended. No Special Permit shall take effect until such decision has been recorded in the Registry of Deeds. Conditions of approval may include but are not limited to the following:
 - a. Street, side or rear setbacks greater than the minimum required by this bylaw;

- b. Modification of the exterior features or appearances of the structure;
 - c. Limitation of size, number of occupants or hours of operation;
 - d. Regulation of number, design and location of access drives or other traffic features;
 - e. Requirement of off-street parking or other special features beyond the minimum required by this or other applicable ordinances; or
 - f. Proposed security precautions shall be adequate to protect the safety and well-being of users of the establishment.
3. A manager responsible for the operation of the establishment shall be designated by the owner, if the owner is not the manager. The manager shall register with the Board of Selectmen. No manager shall be designated who has been convicted of violating G.L. c. 119, §63 or G.L. c. 272, §28 or similar laws in other states or other felony conviction.
4. Expiration. A Special Permit to conduct an Adult Entertainment Use shall expire after a period a two calendar years on the date of Special Permit issuance and shall be renewable for successive two-year periods. A written request for such renewal must be received by the Planning Board prior to said expiration date. Public notice of that request must be published in a newspaper at the applicants expense and no written objection to said renewal has made received by the Planning Board. The Planning Board as Special Permit Granting Authority shall make its decision about the renewal at a public meeting.

8.2.7 Termination: A Special Permit issued under this subsection shall terminate upon any one of the following occurrences:

- 1. There is a change in the location of the Adult Entertainment Use;
- 2. There is a sale, transfer or assignment of the business or the license;
- 3. There is any change in ownership of the applicant; or
- 4. There is a failure to begin a permitted Adult Entertainment Use Establishment within two years of the granting of such permit, except for "good cause", including the time necessary to await a court appeal to establish an Adult Entertainment Use Establishment.