

**Article: To see if the Town will vote to delete the current Section 8.1 of the Oak Bluffs Zoning By-law in its entirety and substitute in its place the following or take any other action relative thereto:**

## **Section 8.1: THE TOWN OF OAK BLUFFS FLOODPLAIN OVERLAY DISTRICT BY-LAW**

### **8.1.1: Statement of Purpose**

The purposes of the Floodplain Overlay District are to:

- a) Limit development in areas subject to flooding, particularly high hazard V zones and AO zones in order to minimize potential loss of life, destruction of property, and environmental damage inevitably resulting from storms, flooding, erosion and relative sea level rise.
- b) Reduce or prevent public health emergencies resulting from surface and ground water contamination from inundation of or damage to sewage disposal systems and storage areas for typical household hazardous substances.
- c) Enable safe access to and from homes and structures for homeowners and emergency response personnel, such as police, fire, and rescue departments.
- d) Minimize monetary loss and public health threats resulting from storm damage to public facilities (water and gas mains; electric, telephone and sewer lines, streets, bridges, etc.).
- e) Prevent loss or diminution of the beneficial functions of storm and flood damage prevention or reduction and pollution prevention provided by wetlands, beaches, dunes, barrier beaches, the floodplain, and coastal banks
- f) Protect public access and ensure that areas of high public value remain open to the public.

### **8.1.2: Floodplain Overlay District Boundaries and Base Flood Elevation Data**

#### **8.1.2.1: Floodplain Overlay District Boundaries**

The Floodplain District is herein established as an overlay district. The Floodplain Overlay District (FPOD) includes all special flood hazard areas within the Town of Oak Bluffs designated as Zone A, AE, AO, V, or VE on the Dukes County Federal Insurance Rate Map (FIRM) issued by the Federal Emergency Management Agency (FEMA) for the administration of the National Flood Insurance Program (NFIP). The map panels of the Dukes County FIRM that are wholly or partially within the Town of Oak Bluffs are panel numbers 25007C0102H, 25007C0103H, 25007C0104H, 25007C0106H, 25007C0108H, 25007C0111H, 25007C0112H, 25007C0116H, dated July 6<sup>th</sup>, 2010. 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 Dukes County Flood Insurance Study (FIS) report dated July 6<sup>th</sup>, 2010. The FIRM and FIS report are incorporated herein by reference and are on file with the conservation commission and the zoning administrator.

#### **8.1.2.2: Base Flood Elevation Data**

Base flood elevation data is required for subdivision proposals or other developments greater than 50 lots or 5 acres, whichever is the lesser, within unnumbered A zones.

### **8.1.3: Scope of Authority**

#### **8.1.3.1: Reference to Existing Regulations**

The Floodplain District is established as an overlay district to all other districts and is superimposed on existing zoning districts. All uses, dimensional requirements, and other provisions of the bylaw applicable to such underlying districts shall remain in force and effect, except where the restrictions and requirements of the overlay district are more restrictive, the later shall prevail.

#### **8.1.3.2: Reference to Other Applicable Laws and Regulations**

In addition, all development in the district, including structural and non-structural activities, whether permitted by right or by special permit under this section must be in compliance with the following;

- a. Wetlands Protection Act, G.L. Ch. 131, s. 40;
- b. Massachusetts State Building Code, 780 CMR;

- c. Coastal Wetlands Restriction Act, G.L. Ch.130, s. 105
- d. Title 5 of the State Sanitary Code, 310 CMR 15.00

#### **8.1.4: Permitted Uses**

Notwithstanding any other provision of this bylaw the following uses and activities are permitted by right within the entire FPOD:

1. Public access activities; however the structures in connection with these activities may be regulated as stipulated below.
2. Repair of existing foundations, unless the work replaces the foundation in total or repairs the foundation so as to constitute new construction or a substantial repair of a foundation.
3. Repair of existing structures, provided that the repair does not constitute a substantial improvement or a reconstruction.

#### **8.1.5: Permitted Uses by Special Permit**

**8.1.5.1:** Notwithstanding any *other* provision of this bylaw, and upon issuance of a Special Permit by the Zoning Board of Appeals, and subject to such special conditions and safeguards as are deemed necessary to fulfill the purpose of this bylaw, the following uses and activities can be permitted in the entire FPOD:

1. Substantial repair to a foundation.
2. Restoration and construction of structures listed in the National Register of Historic Places or the official State Inventory of Historic Places.
3. Construction of water dependent structures as determined by MassDEP Chapter 91 (Waterways) Regulations.
4. Beach or dune nourishment and restoration of coastal resource areas as defined in the MA Wetlands Protection Act and Oak Bluffs Wetlands Bylaw
5. The repair or replacement of an existing septic system.
6. Replacement or repair of existing impervious surfaces, including, but not limited to, swimming pools, tennis/basketball courts, pavement, pavers, concrete slabs at grade, curbing, and retaining walls.

**8.1.5.2:** Notwithstanding any *other* provision of this bylaw, and upon issuance of a Special Permit by the Zoning Board of Appeals, and subject to such special conditions and safeguards as are deemed necessary to fulfill the purpose of this bylaw, the following uses and activities can be permitted in the A and AE Zone of the FPOD:

1. New construction of residential structures.
2. The construction of an addition or other alterations to an existing structure that results in an increase in floor area or intensity of use, or constitutes a substantial improvement.
3. Repair of a substantially damaged structure or reconstruction of an existing structure.
4. New construction of non-residential structures.
5. The following activities are allowed by Special Permit, provided a registered professional engineer certifies in writing that the activity will not cause an increase in wave runup, a deflection or channelization of flood waters, or an increase in the velocity of flow:
  - a) An increase in impervious surface, which may include, but is not limited to, swimming pools, tennis/basketball courts, pavers, concrete slabs at grade, curbing, and retaining walls.
  - b) The storage or disposal of any soil, loam, peat, sand, gravel, rock, or other mineral substance, refuse, trash, rubbish, debris, or dredged spoil.
  - c) The excavation, dredging, removal, or relocation of loam, peat, sand, gravel, soil, rock, or other mineral substance.

**8.1.5.3:** Notwithstanding any *other* provision of this bylaw, and upon issuance of a Special Permit by the Zoning Board of Appeals, and subject to such special conditions and safeguards as are deemed necessary to fulfill the purpose of this bylaw, the following uses and activities can be permitted in the V, VE and AO Zones of the FPOD:

1. Repair of a substantially damaged structure or reconstruction of an existing structure provided the work shall *not* increase floor area.
2. All new construction shall be located landward of the reach of mean high tide.

#### **8.1.6: Prohibited Uses**

**8.1.6.1:** The following uses are prohibited within the entire FPOD:

1. The installation of a basement.

**8.1.6.2:** The following uses are prohibited within the V, VE and AO Zones of the FPOD:

1. New construction of residential structures.
2. The construction of an addition or other alterations to an existing structure that results in an increase in floor area.
3. Repair of substantially damaged structure or reconstruction of an existing structure that results in an increase in floor area.
4. New construction of non-residential structures, with the exception of water dependent structures.
5. Any increase in impervious surface on a residential lot. This may include, but is not limited to, swimming pools, tennis/basketball courts, pavers, concrete slabs at grade, curbing, and retaining walls. For water dependent projects allowed in the V, VE, and AO Zones, impervious surfaces accessory to the use is allowed provided a registered professional engineer certifies in writing that the impervious surface will not cause an increase in wave runup, a deflection or channelization of flood waters, or an increase in the velocity of flow.
6. With the exception of beach nourishment and raised septic systems and maintenance of existing non-residential uses, which must receive a Special Permit (see above), the following uses are specifically prohibited and may not be allowed by Special Permit:
  - a. The storage or disposal of any soil, loam, peat, sand, gravel, rock, or other mineral substance, refuse, trash, rubbish, debris, or dredged spoil, with the exception of landscaping fill that is permitted, provided a registered professional engineer certifies in writing that the fill will not cause an increase in wave runup, a deflection or channelization of flood waters, or an increase in the velocity of flow;
  - b. Draining, excavation, or removal or relocation of loam, peat, sand, gravel, soil, rock, or other mineral substance.
7. The use of fill for structural support of buildings.
8. Man made alterations of sand dunes.

#### **8.1.7 General Administration.**

- A. This bylaw hereby establishes a plan review committee, which shall consist of representatives from the Zoning Board of Appeals, Conservation Commission, Board of Health, Planning Board, and the Cottage City Historic District Commission and Copeland Plan District Review Board when the site is within their jurisdiction. The purpose of this committee is to advise the zoning enforcement officer on building permit decisions for properties in the FPOD.
- B. Before rendering a building permit decision, the building inspector shall receive written comments from the plan review committee, particularly on the following:
  1. Determination of any project's flood zone status, and

2. Determination of whether a proposed construction or alteration of the landform within the FPOD has received all necessary permits from those government agencies from which approval is required by federal, state, or town law.
- C. The building inspector shall:
1. Obtain and maintain records of the elevation (in relation to mean sea level) of the lowest floor, including basement, of all new or substantially improved structures; maintain records as to whether or not such structures contain a basement.
  2. Make a determination of substantial improvement or substantial damage (as defined) using the official records of the Tax Assessor.

### **8.1.8 Special Permit Administration**

- A. All special permits in the FPOD will be granted by The Board of Appeals and shall be administered as follows:
1. Before granting a special permit, The Board of Appeals shall file applications forms and plans to receive written comments from the plan review committee.
  2. The special permit granting authority shall impose conditions and requirements as deemed necessary to fulfill the purpose of this bylaw and as set forth in the regulations promulgated in accordance with MGL Chapter 40A section 9.
  3. The special permit granting authority may require such additional information and impose conditions as it finds necessary to protect the health, safety, and welfare of the public or the occupants of the proposed use, or of the floodplain district.
- B. The Board of Appeals may grant a special permit only upon:
1. A determination that the granting of the special permit will not result in increased flood heights, additional threats to public safety, extraordinary public expense, or conflict with existing local by-laws; and
  2. Determination that the special permit is the minimum necessary to afford relief, considering the flood hazard.

### **8.1.9 Regulations**

The Board of Appeals may adopt, and periodically amend, rules and regulations relating to the terms, conditions, definitions, enforcement, fees (including application, inspection, and/or consultant fees), procedures, and administration of this district by majority vote after conducting a public hearing to receive comments on any proposed revisions.

### **8.1.10 Fees**

The Board of Appeals shall obtain with each submission an Application Fee established by the Board to cover expenses connected with the review of the special permit and a technical review fee sufficient to cover professional review services for the project. The Board is authorized to retain a Registered Professional Engineer or other professional consultant to advise the Board on any or all aspects of these plans. Applicants must pay review fees before the review process may begin.

### **8.1.11 Severability**

If any provision of this bylaw is held invalid by a court of competent jurisdiction, the remainder of the bylaw shall not be affected thereby. The invalidity of any section or sections or parts of any section or sections of this bylaw shall not affect the validity of the remainder of this bylaw.

### **8.1.12: Definitions**

Definitions in this bylaw shall be consistent with the Massachusetts State Building Code, 780 CMR, the Federal Emergency Management Agency (FEMA) National Flood Insurance Program (NFIP) 59.1, and

with Massachusetts Department of Environmental Protection (MassDEP) Chapter 91 (Waterways) Regulations.

**ADDITION** means an extension or increase in floor area or height of a building or structure.

**ALTERATION** means any Construction or Renovation to an Existing Structure Other than Repair or Addition.

**AREA OF SPECIAL FLOOD HAZARD** is 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** means the flood having a one percent chance of being equaled or exceeded in any given year.

**BASEMENT** means that portion of a building that is partly or completely below grade (*See* “Story above grade plane” and 780 CMR 502.1 and 1612.2).

**COASTAL HIGH HAZARD AREA** means 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** means 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.

**DISTRICT** means floodplain district.

**EXISTING STRUCTURE** means a structure erected prior to the date of adoption of the appropriate code, or one for which a legal building permit has been issued.

**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 BOUNDARY AND FLOODWAY MAP** means 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)** means an official map of a community issued by FEMA 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)** 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, or an examination, evaluation and determination of flood-related erosion hazards.

**FLOODWAY** means 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.

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

**NEW CONSTRUCTION** means, 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. 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.

**PERMIT** means an official document or certificate issued by the authority having jurisdiction, which authorizes performance of a specified activity.

**REGULATORY FLOODWAY** - see FLOODWAY

**REPAIR** means the reconstruction or renewal of any part of an existing building for the purpose of its maintenance.

**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, A1-30, AE, A99, AH, V, V1-30, VE.

**STRUCTURE** means, 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** means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

**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.

**WATER-DEPENDENT USE** means a use that requires direct access to or location in tidal or inland waters, and therefore cannot be located away from said waters. It is any use that complies with or is specified in the DEP regulations at 310 CMR 9.12(2).

**ZONE A** means the 100-year floodplain area where the base flood elevation (BFE) has not been determined. To determine the BFE, use the best available federal, state, local, or other data.

**ZONE A1-30** and **ZONE AE** (for new and revised maps) means the 100-year floodplain where the base flood elevation has been determined.

**ZONE AH** and **ZONE AO** means the 100-year floodplain with flood depths of 1 to 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 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.

**ZONES B, C, AND X** are 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 V** means a special flood hazard area along a coast subject to inundation by the 100-year flood with the additional hazards associated with storm waves. Base flood elevations have not been determined.

**ZONE V1-30** and **ZONE VE** (for new and revised maps) means 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.

*Approved May 4, 2010*