

CUMMINGTON – Current Bylaw

FLOODPLAIN AND WESTFIELD RIVER PROTECTION DISTRICT (FP)

a. Purpose:

- (1) Protect life, public safety and property from flooding hazards;
- (2) Preserve the natural flood control and flood storage characteristics of the floodplain;
- (3) Promote the preservation of agricultural lands along the Westfield River;
- (4) Prevent any alterations to the natural flow of the river;
- (5) Protect fisheries and wildlife habitat within and along the river;
- (6) Control erosion and siltation;
- (7) Enhance and preserve existing scenic or environmentally sensitive areas along the shoreline;
- (8) Conserve shore cover and encourage well-designed developments;
- (9) Prevent water pollution caused by erosion, sedimentation, nutrient or pesticide run-off, and poorly sited waste disposal facilities;
- (10) Preserve and maintain the groundwater table and water recharge areas within the floodplain.

b. District Delineation

(1) The Floodplain District is herein established as an overlay district and includes all special flood hazards areas designated as Zones A, A1-30 on the Cummington Flood Insurance Rate Maps (FIRM), dated February 22, 1989 (Panels 250159 0001-0010), on file with the Town Clerk and hereby made a part of this ordinance.

(2) The Westfield River Protection District is herein established as an overlay district. The area subject to the bylaw shall be the entire length of the East Branch of the Westfield River within the Town of Cummington. The Westfield River Protection District shall encompass those floodplain areas designated as Zone A or Zones A 1-30 on the Town of Cummington Flood Insurance Rate Maps (FIRM) for the Westfield River, East Branch. Where the floodplain has not been delineated on the FIRM maps or where the delineation is less than 100 feet from the river bank (as defined by M.G.L. Chapter 131, Section 40), the Westfield River Protection District shall be defined as that area within 100 feet, measured horizontally, of the river bank. For the purposes of this bylaw, the riverbank shall be defined as the river's seasonal high water mark.

(3) The boundaries of the Floodplain and Westfield River Protection Districts shall be determined by scaling distances on the Flood Insurance Rate Map. When interpretation is needed as to the exact location of the boundaries of a District, the Building Inspector shall make the necessary interpretation.

c. Use Regulations

All development, including structural and non-structural activities, whether permitted as a right or by special permit must be in compliance with the Mass. Wetlands Protection Act, Chapter 131, Section 40 of the Massachusetts General Laws and with the requirements of

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the Massachusetts State Building Code 780 CMR 744.0 pertaining to construction in the floodplain and with the State Environmental Code, Title V.

(1) Permitted Uses.

The following uses of low flood-damage potential and causing no obstruction to flood flows shall be permitted in the Floodplain and Westfield River Protection Districts provided they do not require structures, fill or storage of materials or equipment:

- a. Agricultural uses such as farming, grazing and horticulture.
- b. Forestry uses.
- c. Outdoor recreational uses, including fishing, boating, play areas and foot, bicycle or horse paths.
- d. Conservation of water, plants, and wildlife.
- e. Wildlife management areas.
- f. Buildings lawfully existing prior to the adoption of these provisions.

(2) Uses by Special Permit in the Floodplain and Westfield River Protection Districts

(a) No structure or building in the Floodplain and Westfield River Protection Districts shall be erected, constructed, substantially improved, reconstructed or otherwise created or moved; no earth or other materials dumped, filled, excavated, or transferred, unless a special permit is granted by the Zoning Board of Appeals.

(b) The following uses may be allowed by Special Permit from the Zoning Board of Appeals in accordance with the Special Permit regulations in Section 5-C of this bylaw, and additional restrictions and criteria contained herein:

1. Single-family residences, not including mobile homes.
2. Residential accessory uses including garages, driveways, private roads, utility rights-of-way, and on-site wastewater disposal systems.

(3) Special Permit Requirements in the Floodplain District.

The following Special Permit requirements apply in the Floodplain District:

(a) With Zone A 1-30, where base flood elevation is not provided on the FIRM, the applicant shall obtain any existing base flood elevation data. These data will be reviewed by the Building Inspector for their reasonable utilization toward meeting the elevation or floodproofing requirements as appropriate, of the State Building Code.

(b) No encroachments (including fill, new construction, substantial improvements to existing structures, or other development) shall be

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allowed unless it is demonstrated by the applicant that the proposed development, as a result of compensating actions, will not result in any increase in flood levels during the occurrence of a 100-year flood in accordance with the Federal Emergency Management Agency's regulations for the National Flood Insurance Program.

(c) The proposed use shall comply in all respects to the provisions of the underlying District in which the land is located.

(d) The 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.

(e) Within 10 days of the receipt of the application, the Board shall transmit one copy of the development plan to the Conservation Commission, Board of Health, Building Inspector, and the Planning Board. Final action shall not be taken until reports have been received from the above boards or until 35 days have elapsed.

(4) Special Permit Requirements in the Westfield River Protection District
The following Special Permit requirements apply in the Westfield River Protection Districts, in addition to those requirements specified in Sections 3-c-3:

(a) A buffer strip extending at least one hundred (100) feet in depth, to be measured landward from each bank of the Westfield River shall be required for all lots within the River Protection District. If any lot, existing at the time of adoption of this bylaw, does not contain sufficient depth, measured landward from the river bank, to provide a one hundred foot buffer strip, the buffer strip may be reduced to 50% of the available lot depth, measured landward from the river bank.

1. The buffer strip shall include trees and shall be kept in a natural or scenic condition.
2. No buildings nor structures shall be erected, enlarged, altered or moved within the buffer strip.
3. On-site wastewater disposal systems shall not be located within the buffer strip and shall be located as far from the Westfield River as is feasible.

(5) Special Permit Criteria

In addition to the provisions of Section 5-C, the Zoning Board of Appeals may issue a special permit if it finds the proposed use is compliant with the following provisions:

(a) In the Floodplain District, proposed uses must:

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1. Not create increased flood hazards which are detrimental to the public health, safety, and welfare.
2. Comply in all respects to the provisions of the underlying District or Districts within which the land is located.
3. Comply with all applicable state and federal laws, including the Massachusetts Building Code and the Massachusetts Wetlands Protection Act (M.G.L. Ch. 131, Sec. 40).

(b) In the Westfield River Protection District, proposed uses must also:

1. Be situated in a portion of the site will most likely conserve shoreland vegetation and the integrity of the buffer strip;
2. Be integrated into the existing landscape through features such as vegetative buffers and through retention of the natural shorelines;
3. Not result in erosion or sedimentation;
4. Not result in water pollution.

(6) Restricted Uses Within the Westfield River Protection District

(a) No altering, dumping, filling or removal of riverine materials or dredging is permitted. Maintenance of the river, including stabilization or repair of eroded riverbanks or removal of flood debris, may be done under requirements M.G.L. Chapter 131, Section 40, and any other laws, bylaws, and regulations. Riverbank repairs shall be undertaken utilizing only natural materials (i.e. rock) and not with man-made materials (i.e. tires).

(b) All forest cutting over 25,000 board feet at one time shall require the filing of a Forest Cutting Plan in accordance with the Mass. Forest Cutting Practices Act (M.G.L. Chapter 132, sections 40-46). In addition, no commercial cutting of forest or vegetation shall occur within 50 feet of the river bank. In the area between 50 feet and 100 feet from the river bank, no more than 50% of existing forest shall be cut.

(c) No impoundments, dams or other water obstructions may be located within the district.

(d) No private wastewater treatment facilities, including residential package treatment plants, shall discharge directly to the East Branch of the Westfield River.

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(e) All other uses not specifically permitted or allowed by site plan approval within the overlay zone are prohibited.

(f) All utilities shall meet the following standards:

1. All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system.

2. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the system and discharge from the system into flood waters.

3. On-site waste disposal system shall be located to avoid impairment or contamination from them during the flooding and shall be located no less than 150 feet from the normal high water mark.

(7) Prohibited Uses

(a) No residential, commercial or industrial structures shall be constructed within the floodway, as designated on the Cummington Flood Insurance Rate Maps (FIRM).m

(8) Nonconforming Uses

(a) Any lawful use, building, structures, premises, land or parts thereof existing at the effective of this bylaw or amendments thereof and not in conformance with the provisions of this bylaw shall be considered to be a nonconforming use.

(b) Any existing use or structure may continue and may be maintained, repaired and improved, but in no event made larger.

(c) Any nonconforming structure which is destroyed may be rebuilt on the same location but no larger than its overall original square footage.