

ZONING BYLAW
TOWN OF NAHANT
MASSACHUSETTS

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ZONING BY-LAWS Town
of Nahant

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SECTION 2

DEFINITIONS

SECTION 2.01 – GENERAL

For the purpose of this bylaw and unless the context of usage clearly indicates another meaning, the following terms shall have the meanings indicated herein. Words used in the present tense include the future; the singular number includes the plural, and plural the singular; the words “used” or “occupied” include the words “designed, “arranged”, “intended”, or “offered”, to be used or occupied; the words “building”, “structure”, “lot”, “land”, or “premises” shall be construed as though followed by the words “or any portion thereof”; and the word “shall” is always mandatory and not merely directory. Terms and words not defined herein but defined in the Commonwealth of Massachusetts State Building Code shall have meanings given therein unless a contrary intention clearly appears. Words not defined in either place shall have the meaning given in the most recent edition of Webster’s Unabridged Dictionary.

SECTION 2.02 – DEFINITIONS

The defined words and phrases are as follows:

Abandonment: The cessation of a use or the discontinuance of a use of a structure or lot; or the removal of the characteristic equipment or furnishings; or the replacement of a nonconforming user or structure by a conforming use or structure.

Accessory Building: A building devoted exclusively to a use subordinate to the principle use and customarily incidental to the principle use. (See Section 4.12)

Accessory Use: A use subordinate to the principle use and customarily incidental to the principle use. (See Section 4.12)

Alteration: Any construction, reconstruction or other similar action resulting in a change in the structural parts, height, number of stories, exits, size, location, or use of a building or other structure.

Attached Dwelling: A one-family dwelling in a row of at least three (3) such units in which each unit has its own front and rear access to the outside, no unit is located over another unit, and each unit is separated from any other unit by one or more common fire resistant walls. Attached dwellings are also referred to as townhouses, townhouse dwellings or row houses.

Attached Dwelling Development: A row of at least three (3) one-family attached dwelling units that’s sidewalls are separated from other dwelling units by a firewall or walls. Each unit in the row, or townhouse, may be owned by a separate owner and shall have its own at-grade access.

Automobile Repair Garage: Any building in which a business or industry dealing with the repair or servicing of motor vehicles is maintained.

Average Finished Grade: The mean grade of the ground at the building foundation. In determining maximum height of a building, mean grade is the mean original grade at the building foundation before any construction is commenced. In determining whether a space is classified as a “basement” or a “cellar”, average finished grade is the mean grade within five (5) feet of the building foundation after construction is completed.

Basement: A portion of a building, partly below grade, which has more than one-half (1/2) of its height, measured from finished floor to finished ceiling, above the average finished grade of the ground adjoining the building. A basement is not considered a story unless its ceiling is four feet, six inches (4ft 6in) or more above the average finished grade. (See figure 1.)

Building: A combination of any materials, whether portable or fixed, having a roof, built to form a structure for the shelter of persons, animals or property. For purposes of this definition, “roof” shall include an awning or any similar covering, whether or not permanent in nature (Rev. 4-92).

Building Area: The aggregate of the maximum horizontal cross sectional area of:

- A. All buildings on a lot, exclusive of cornices, eaves, gutters, chimneys: and
- B. All unroofed steps, porches, balconies, terraces, patios or decks, which at any point may have a floor height of two (2) feet or more above ground level.
(Rev. 4-92)

Building Coverage: The building area expressed as a percent of the total lot area.

Building Detached: A building having open space on all sides.

Building Inspector: Building inspector, Town of Nahant, Massachusetts.

Building Setback Line: The line established by this bylaw, beyond which a building shall not extend except as specifically provided by this bylaw.

Carport: A roofed structure, unenclosed on two (2) or more sides, which may serve as a shelter for motor vehicles.

Cellar: A portion of a building, partly or entirely below grade, which has more than one-half (1/2) of its height, measured from finished floor to finished ceiling, below the average finished grade of the ground adjoining the building. A cellar is not deemed a story. (See figure 1.)

Commercial Vehicle: For the purpose of this bylaw, any cart or wagon or any vehicle which is included in the definition of a motor vehicle given in Chapter 90 of the Massachusetts General Laws including but not limited to a passenger car or van on which is permanently affixed any writing to designate the business or professional use or affiliation of said car or van, or any truck or other vehicle which would be classified as other than a passenger vehicle for purposes of

registration in the Commonwealth of Massachusetts, but excluding a passenger car, truck, or other vehicle not marked for business use.

Court: An open, uncovered, unoccupied space partially or wholly surrounded by the walls of a structure.

Day Care Center: Any facility operated on a regular basis whether known as a day nursery, nursery school, kindergarten, child play school, progressive school, child development center, or pre-school, or known under any other name, which receives children not of common parentage under seven (7) years of age, or under sixteen (16) years of age if such children have special needs, for non-residential custody and care during part or all of the day separate from their parents.

Day Care Center shall not include any part of a public school system; any part of a private organized education system, unless the services of such system is primarily limited to kindergarten, nursery or related pre-school services; a religious education program conducted by a religious organization where children are cared for during short periods of time while persons responsible for such children are attending religious services; a family day care home; or the occasional care of children with or without compensation therefore. (See also "Family Day Care Home".) A day care center can also include an elderly day care center or facility.

Detached Dwelling: A building which is designed or occupied as a one-family residences on its own lot and is separated by side yards from any other structure or structures, except accessory buildings.

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]

District: A zoning district as established by Section 3 of this bylaw.

Driveway: An open space, which may be paved, located on a lot, which is not more than twenty (20) feet in width, built for access to a garage, or off-street parking or loading space, and as further regulated by Section 6, hereof.

Drive-In Retail or Service Establishment: A business or commercial establishment, which dispenses any food, beverages, goods or services from inside a building to persons standing outside or seated in their automobiles.

Duplex House: A house containing two (2) dwelling units adjoining side by side; that is, in which no part of one (1) dwelling unit is over any part of the other dwelling unit. A duplex house shall be considered as one principle building occupying one lot for the purpose of determining yard requirements. The term duplex house is synonymous with the term semi-detached dwelling.

Dwelling: A privately or publicly owned permanent structure, whether owned by one or more persons in any legal form, which is occupied in whole or part as the home residence or sleeping

place of one or more persons. The terms “one-family” or “two-family” dwelling shall not include hotel, lodging house, hospital, membership club, mobile home or dormitory.

Dwelling Unit: One or more living and sleeping rooms providing complete living facilities for the use of one or more individuals constitute a single housekeeping unit, with permanent provisions for living, sleeping, eating, cooking and sanitation.

Environmental Monitoring: Field collection of samples for laboratory and/or field analysis.
Erected: The word “erected” shall include the words “attached”, “built”, “constructed”, “reconstructed”, “altered”, “enlarged” and “moved”.

Family: One or more persons occupying a dwelling unit and living and cooking together on the premises as a single, non-profit, housekeeping unit; provided, however, that not more than two (2) individuals not related to each other either by blood or adoption within the second degree of kindred and not married to each other may be deemed to be members of the same family.

Family Day Care Home: Any private residence which on a regular basis receives, for temporary custody and care during part or all of the day, children under seven (7) years of age, or children under sixteen (16) years of age if such children have special needs; provided, however, in either case, that any such family day care home be licensed by the Commonwealth of Massachusetts and any other licensing authorities, that the total number of children under sixteen (16) in a family day care home shall not exceed six (6), including participating children living in the residence, or such lesser number as is allowed under the terms of the license, and that the family day care home comply with all other applicable terms of its license and all applicable regulations. Family Day Care Home shall not mean a private residence used for an informal cooperative arrangement among neighbors or relatives, or the occasional care of children with or without compensation therefore. An occupancy permit from the officer of the Building Inspector shall be required. (See definition of “Day Care Center” if over six (6) children are served).

Fast-Order Food Establishment: An establishment whose primary business is the sale of food for consumption on or off the premises which is (a) primarily intended for immediate consumption rather than for use as an ingredient or component of meals; (b) available upon a short waiting time; and (c) packaged or presented in such a manner that it can be readily eaten either inside or outside the premises where it is sold.

Fence: A hedge, structure, or partition, erected for the purpose of enclosing a parcel of land, dividing a parcel of land into distinct portions, or separating contiguous parcels of land. (Rev. 4-93)

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]

Floor Area Ratio (FAR): The ratio of the gross floor area to the total area of the lot.

Footprint: The outline of the area on a lot occupied by a building, including the foundation outline and any enclosed porches, but excluding any open porches, balconies, decks, or roof overhangs.

Frontage: The front property line of a building or lot abutting on a public or private way approved by the Town.

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]

Garage, Private: Any building or portion of a building, accessory to and located upon the same lot as a residential building or upon a lot in the same ownership and adjacent to the lot on which the served residential building is located, which is used for keeping of a motor vehicle or motor vehicles and in which no business or industry dealing with sales, servicing, or repair of such vehicles is carried on.

Gasoline Station: A building, facility, or part thereof with at least one and no more than two (2) service bays whose chief activity is the selling of gasoline, oil and related products for motor vehicles and the provisions for lubricating service or auto repair limited to: tire service and repair (but no recapping or regrooving), replacement of miscellaneous parts and minor adjustments to parts of motor no involving removal of head, crankcase or motor. A self- service portion of a gasoline station may be part of a full-service station only.

Grade: The elevation of a point on the ground above any designated base elevation; used for the purpose of determining the height and slope of various parts of a site compared to other parts, or compared to a designated base elevation.

Gross Floor Area (GFA): The sum in square feet, of the gross horizontal areas of all the floors of a principle building, and its accessory buildings on the same lot, as measured from the exterior faces of the exterior walls, or centerlines of walls separating two (2) buildings, including:

1. Elevator shafts and stairwells on each floor;
2. Attic space with a structural headroom of seven (7) feet or more, except as hereafter excluded;
3. Interior mezzanines, and penthouses;
4. Basement and cellar areas with a ceiling height of seven (7) feet or more not devoted exclusively to uses accessory to the operation of the building, and all basement and cellar areas, regardless of ceiling height, which have finished floors, ceilings and walls, or which are actually used for living purposes;
5. All-weather covered habitable porches and balconies;

But excluding:

1. Areas used for parking garages, accessory parking, or off-street loading purposes;
2. Basement and cellar areas devoted exclusively to uses accessory to the operation of the building, and basement and cellar areas with a ceiling height of less than seven (7) feet, which do not have finished floors, ceilings or walls and are not actually used for living purposes.
3. Open or lattice enclosed exterior fire escapes;
4. Attic space and other areas for elevator machinery or mechanical equipment accessory to the building;
5. Open porches and balconies. Areas excluded from gross floor area are still subject to all dimensional requirements, including minimum yard setbacks and maximum building coverage. (Rev. 4/92)

Height of Building: For the purpose of this bylaw, the height of any building shall be the vertical distance of the highest point of the roof, or any rooftop deck, fence, railing, widows' walk or other rooftop structure or feature, above the mean original grade of the ground undisturbed adjoining the building before any construction is commenced. Chimneys, ventilators, skylights, tanks, bulkheads, and solar panels shall not be considered part of the height of the buildings if they do not extend more than four (4) feet above the specified height limit. Domes, towers or spires which are an integral part of churches or religious buildings shall not be subject to these limitations, provided that such features shall in no way be used for living purposes.

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]

Historic Structure: 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]

Home Occupation: An accessory use, which by custom has been carried on entirely within a dwelling unit, and is incidental and subordinate to the dwelling use. In connection with such use, there shall be no retail sale of merchandise on the premises. Such use shall be carried on by the occupants of the dwelling unit in compliance with the provisions of Section 4, Use Regulations, and shall not in any manner change the residential character of the building.

Home occupations do not include such uses as barbershops, commercial stables or kennels, teaching of more than three (3) pupils simultaneously, and in the case of musical instruction, more than one (1) pupil at a time (See Section 4.07).

Lodgers: (See Section 4.06 “Renting of Rooms to Roomers or Lodgers”)**Lot:** An area or parcel of land or any part thereof in individual, joint, or common ownership, or in ownership by the entirety, which is designated on a plan as a separate lot and which has boundaries identical with those on a plan recorded in the Essex South District Registry of Deeds.

Lot, Corner: A lot located at the intersection of two or more streets or ways having an angle of intersection of not more than 135 degrees. (See figure 2.)

Lot, Interior: A lot not bound by a street (See figure 2.)

Lot Line, Front: The property line dividing a lot from a street or right-of-way.

Lot Line, Rear: Any lot line, which is parallel to or within 45 degrees of being parallel to a front lot line. In the case of a corner lot, the two lot lines that are not front lot lines shall be considered side lot lines. In the case of a lot having no street frontage or a lot of odd shape

Lot Line, Side: Any lot line not a front or rear lot line.

Lot, Nonconforming: A lot lawfully existing at the effective date of this bylaw, or any subsequent amendment thereto, which is not in accordance with all provisions of this bylaw, including but not limited to a lot which does not meet the lot area or street frontage requirements shown on Table 2, Table of Dimensional Requirements. (Rev. 4/91)

Lot, Through: A lot abutting more than one street (including a corner lot). (See Figure 2.)

Lot Width: The shortest distance between opposite sidelines of a lot measured at a point midway between the front lot line and the rear lot line. At no point between the street frontage line and the midway point shall the lot be narrower than 75% of the required lot width.

Marijuana Cultivator: Any entity licensed to cultivate, process and package Marijuana, and to transfer Marijuana to other Marijuana Establishments, but not to Consumers. (Rev.5-15-21)

Marijuana Establishments: A Marijuana Cultivator, Craft Marijuana Cooperative, Marijuana Product Manufacturer, Marijuana Microbusiness, Independent Testing Laboratory, Marijuana Retailer, Marijuana Transporter, Delivery Licensee, Marijuana Research Facility Licensee:

Marijuana Research Facility Licensee Social Consumption Establishment (as defined in 935 CMR 500.002): Social Consumption Establishment or any other type of licensed Marijuana-related business, except a Medical Marijuana Treatment Center. (Rev.5-15-21)

Marijuana Product Manufacturer: An entity licensed to obtain, manufacture, process and package Marijuana or Marijuana products and to transfer these products to other Marijuana Establishments, but not to consumers. (Rev.5-15-21)

Marijuana Research Facility: The premises at which a Marijuana Research Facility Licensee is approved to conduct research. (Rev.5-15-21)

Marijuana Research Facility Licensee: An academic institution, nonprofit corporation or domestic corporation or entity authorized to do business in the Commonwealth, including a licensed Marijuana Establishment or Medical Marijuana Treatment Center, that is licensed to conduct research. (Rev.5-15-21)

Marijuana Retailer: An entity licensed to purchase, repackage, white label, and transport Marijuana or Marijuana product from Marijuana Establishments and to transfer or otherwise transfer this product to Marijuana Establishments and to sell to consumers. Unless licensed, retailers are prohibited from offering marijuana or marijuana products for the purposes of on-site social consumption on the premises of a Marijuana Establishment. (Rev.5-15-21).

Medical Marijuana Treatment Center (MTC) (formerly known as a Registered Marijuana Dispensary (RMD)): An entity licensed under 935 CMR 501.101 that acquires, cultivates, possesses, processes (including development of related products such as edibles, Marijuana-infused products, tinctures, aerosols, oils, or ointments), repackages, transports, sells, distributes, delivers, dispenses, or administers Marijuana, products containing Marijuana, related supplies, or educational materials to registered qualifying patients or their personal caregivers for medical use. Unless otherwise specified, MTC refers to the site(s) of dispensing, cultivation, and preparation of Marijuana for medical use.” (Rev.5-15-21)

Membership Club: A noncommercial social, sports, or fraternal association or organization, which is used exclusively by members and their guests.

Meteorological Monitoring: The collection of data relevant to wind, speed and direction.

Multi-Family Dwelling: A building designed or intended or used as the home of three (3) or more families, each in a separate dwelling unit, living independently of each other and who may have common rights in halls and stairways.

New Construction: Structures for which the start of construction commenced on or after the effective date of the first floodplain management code, regulation, 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]

Non-Hazardous Research: Research activities including, but not limited to, the fields of engineering, physics, social science and other disciplines. Any activity, which may be detrimental to the health, safety or welfare of persons working in or living near the activity, is expressly prohibited. Included in this category would be research involving toxic chemicals, recombinant DNA, infectious microorganisms, radiation sources, atmospheric and/or noise pollution.

Non-Owner Occupied Short-Term Rental: A dwelling unit made available for Short-Term Rental that is neither the Principal Residence of the owner, nor is located within the same residential building as the owners Principal Residence. (rev. 2023-ATM)

Nonprofit Religious or Educational Purposes: Land or structures for religious purposes or for educational purposes on land owned or leased by the Commonwealth of Massachusetts or any of its agencies, subdivisions or bodies politic or by a religious sect or denomination, or by a nonprofit educational corporation shall be permitted in any district only to the extent required by M.G.L.c. 40A § 3 (STM 11/19); provided, however, that such land or structures shall be subject to the regulations concerning the bulk and height of structures and determining yard sizes, lot area, setbacks, open space, parking (STM 11/19) and building coverage requirements as described in Table 2 of Section 5 for each district and parking as described in Table 6-1 (STM 11/19).

Occupancy Permit: A statement signed by the Building Inspector, setting forth either that a building or structure complies with this bylaw or that a building, structure or parcel of land may lawfully be employed for specified uses, or both.

Office: A place in which functions such as directing, consulting, recordkeeping, clerical work, and sales (without the presence of merchandise) of a firm are carried on; also, a place in which a professional person conducts his or her professional business.

One-Family Dwelling: A detached dwelling designed and used for a single family; a house.

Open Space Land: Land on a developed parcel which is unbuilt upon and contains no paved parking, loading, or driveway areas, but which may contain active or passive recreation areas, including incidental paving related thereto.

Outdoor Storage Area: A space outside of a building which is used to keep merchandise for use, goods to be processed or machinery for use.

Owner: The duly authorized agent, attorney, purchaser, devisee, trustee, lessee, or any person having vested or equitable interest in the use, structure or lot in question.

Owner Occupied Short-Term Rental: The Short-Term Rental of a dwelling unit of no more than the number of lawful bedrooms within such dwelling unit that is the Principal Residence of its operator. (rev. 2023 – ATM)

Owner Adjacent Short-Term Rental: A residential unit offered as a Short-Term Rental which is not the owner's Principal Residence but which is located within the same dwelling and/or parcel as the Principal Residence. (rev. 2023 ATM)

Parking Space: An off-street space inside or outside a structure for exclusive use as a parking stall for one motor vehicle.

Permanent Open Space: Land set aside by irrevocable covenant as permanent open space in public, private or cooperative ownership. The form of covenant covering such open space land shall provide for its permanent ownership and maintenance and shall be subject to the approval of the Town Counsel and the Board of Selectmen. With the approval of the Town Meeting, this land may be deeded to the Town.

Principle Use: (See “Use, Principle”)

Recreational Vehicle: 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]

Repair: Any maintenance, which affects structure, egress, fire protection systems, fire ratings, energy conservation provisions, use, occupancy or utilities.

Repair, Ordinary: Any maintenance which does not affect structure, egress, fire protection systems, fire ratings, energy conservation provisions, plumbing, sanitary, gas, electrical or other utilities.

Residential Open Space Preservation (ROSP): Re: Massachusetts General Laws, 40A, 9.1; Section 11 of the by-laws, designed to preserve Nahant’s open spaces, woodlands, public lands and scenic vistas, by permitting the most harmonious use of the parcel’s natural features and resources via allowing flexibility for the development of single and/or attached dwellings (see definition). A single parcel of land owned by one owner, consisting of no less than three quarters (3/4) of an acre may be developed under the ROSP by-laws as an alternative to the standard single-family house lot. An ROSP may only be granted to the standard single-family house lot. An ROSP may only be granted by special permit, with the Planning Board as the granting agency. (Rev. 4/96)

Restaurant: An establishment, other than a Fast Food Establishment, where the principle activity is the service or sale of prepared food or drink for on-premises or off-premises consumption.

Retaining Wall: A wall designed to resist the lateral displacement of soil or other material. (Rev. 4-93)

Roomers: (See Section 4.06 “Renting of Rooms to Roomers or Lodgers”).

Semi-Detached Dwelling: (See “Duplex House”).

Setback: The shortest horizontal distance from any lot line to the nearest building wall or building part.

Short-Term Rental Operator - The person or persons offering a dwelling unit or bedroom for short-term rental, who may be either the owner or the primary leaseholder of the dwelling unit with the written permission of the property owner and the condominium association if applicable. (rev. 2023-ATM)

Sign: Any permanent structure, device, letter, word, model, insignia, trade flag, steamer, display, emblem, or representation used as, or which is in the nature of, an advertisement, announcement, or direction, or is designed to attract the eye. This definition shall include signs located within a window. Marquees, canopies, clocks, thermometers and calendars shall be subject to these provisions when used in conjunction with signs as defined above. (See Section 8 for specific regulations relating to signs).

Sign, Accessory: Any sign that, with respect to the premises on which it is erected, advertises or indicated one or more of the following: the person occupying the premises, the business

Sign Area; Area of a Sign; Signage: Shall mean the area of the smallest horizontally or vertically oriented rectangle which could enclose all the display area of the sign, together with any backing different in color or material from the finish material of the building face, without deduction for open space or other irregularities. Structural members not bearing advertising matter shall not be included unless internally or decoratively lighted. Only one side of flat, back-to-back signs need to be included in calculating sign area.

Sign, Facing or Face: The surface of a sign, board, background area, and structural trim upon, against or through which a message is displayed or illustrated on the sign.

Sign, Freestanding: A sign not a part or attached to any building but generally located elsewhere on a lot. Such sign shall not exceed a height of 20 feet and shall have 10 feet of clearance under the sign.

Sign, Ground: A freestanding sign located on or close to the ground, the top of which shall not be higher than four (4) feet about the ground.

Sign, Permanent: Any sign as defined above, intended to be erected and maintained for more than 90 days.

Sign, Portable: A freestanding sign not permanently affixed, anchored, or secured to the ground or a structure on the lot it occupies, including trailered signs but excluding signs affixed to or painted on a vehicle.

Sign, Projecting: Any sign, which is attached to a building or other structure any part of which projects more than 18 inches from the wall surface of that portion of the building or structure in front of which the sign is positioned.

Sign, Roof: Any sign erected, constructed and maintained upon or over the roof of any building.

Sign, Temporary: Any sign, including its supporting structure, intended to be maintained for a continuous period not to exceed 90 days.

Sign, Wall: A sign not exceeding four (4) feet in height securely affixed to a wall projecting not more than 12 inches from and parallel to the face of such wall, not projecting beyond the building face fronting on a street or parking lot nor above the highest line of the wall to which it is attached. A wall sign shall be no higher than the lowest of the following: (a) 25 feet above grade; (b) the bottom of the sills of the first level of windows above the first story; or (c) the cornice line of the building at the building line. If attached to a parapet, a sign shall not exceed the height of the parapet.

Sign, Primary Wall: A sign on the building face fronting on a street or parking lot frontage.

Sign, Secondary Wall: A sign located on any building face fronting on a street or parking lot frontage other than that of the primary wall sign. The cumulative area of all secondary wall signs shall not exceed 50 percent of the maximum possible area of the primary wall sign.

Signs, Window: Signed painted or posted on an interior translucent surface including windows and doors, such coverage not to exceed 25 percent of the area visible from the exterior of the building.

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]

Special Permit Use: A use of a structure or lot or any action upon a premises which may be permitted under this bylaw only upon application to, and with the approval of, the Special Permit Granting Authority in accordance with Section 9 hereof.

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]

Story: The portion of a building, which is between one floor level and the next higher floor level, or the roof. If a mezzanine floor area exceeds one-third (1/3) of the area of the floor immediately below, it shall be deemed to be a story. A basement shall be deemed to be a story when its ceiling is four feet, six inches or more above the average finished grade. A cellar shall not be deemed to be a story. An attic shall not be deemed a story if unfinished and not used for human occupancy.

Story, Half: A story which is under a gable, hipped, or gambrel roof, where less than one-half (1/2) the floor area has a clear height of seven (7) feet or more. (See Figure 3)

Street: A public or private way, which is accepted or devoted to public use by legal mapping or by other lawful procedure. It shall be synonymous with the words “street”, “right-of-way”, “road”, “avenue”, “highway”, “parkway”, and other similar designations. Prior to issuance of a building permit, the Building Inspector shall determine that the street will be passable for automobiles and emergency vehicles during all seasons of the year. (See Fig. 3.)

Street Line: (See “Lot Line, Front”)

Structure: A combination of materials for permanent or temporary occupancy or use, such as a building, bridge, trestle, tower, framework, retaining wall, tank, tunnel, tent, stadium, reviewing stand, platform, swimming pool, shelter, pier, wharf, bin, fence, sign, antenna, carport, court, deck or the like.

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.

[US Code of Federal Regulations, Title 44, Part 59]

Structure, Nonconforming: A structure, lawfully existing at the time of adoption of this bylaw, or any subsequent amendment thereto, which does not conform to one or more of the applicable use, dimensional, or density regulations for the district in which the structure is located; or a structure on a nonconforming lot.

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]

Two-Family Dwelling: A house on a single lot containing two dwelling units. This definition includes duplex houses.

Use: The purpose for which a structure or lot is arranged, designed, or intended to be used, occupied or maintained.

Use, Accessory: (See “Accessory Use”)

Use, Nonconforming: A use lawfully existing at the time of adoption of this bylaw or any subsequent amendment thereto which does not conform to one or more provisions of this bylaw (See Section 7).

Use, Principle: The main or primary purpose for which a structure or lot is designed, arranged or intended, or for which it may be used, occupied or maintained under this bylaw.

Variance: A departure from the terms of this bylaw authorized by the Board of Appeals under the terms of Section 9 hereof.

Variance, for Floodplain Management Purposes: 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, for Floodplain Management Purposes: The failure of a structure or other development to be fully compliant with the Nahant's flood plain management regulations (by-laws). A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in Paragraph 60.3 (44 CFR 59) is presumed to be in violation until such time as that documentation is provided.

[US Code of Federal Regulations, Title 44, Part 59]

Yard: An open space unobstructed from the ground up, on the same lot with a principle building, extending along a lot line or front lot line and inward to the principle building. The size of a required yard shall be measured as the shortest distance between the nearest point of the building and a lot line or front lot line. Structures, which are below the finished lot grade, shall not be deemed to occupy required yards.

Yard, Front: A yard extending across the full width of a lot and lying between the front lot line and the nearest part of a building. (See Figure 4.)

Yard, Rear: A yard extending across the full width of a lot and lying between the rear lot line and the nearest part of a building. (See Figure 4.)

Yard, Side: A yard extending from the front yard to the rear yard and lying between a side lot line and the nearest part of a building. (See Figure 4.)

SECTION 10

FLOOD PLAIN DISTRICT (Revised ATM 4 28 12) Revised 4 26 2015

SECTION 10.1 – PURPOSES

The purposes of this District are:

1. To provide that lands in the Town of Nahant, subject to seasonal or periodic flooding, as described hereinafter, shall not be used in such a manner as to endanger the health or safety of the occupants thereof, or of the public generally, or as to burden the public with cost resulting from unwise individual choices of land use.
2. To assure the continuation of the natural flow pattern of the watercourses within the Town and to minimize the impact of coastal storms, in order to protect persons and property against the hazards of flood inundation.
3. To provide compliance and adopt the floodplain management regulations of the National Flood Insurance Program (NFIP) and specifically Paragraph 60.3(e) of those regulations (44 CFR 59, etc.), and incorporating said regulations herein by reference.
4. Designation of community Floodplain Administrator: The Town of Nahant hereby designates the position of building inspector to be the official Flood Plain Administrator for the Town.

SECTION 10.1.1 – PERMITS

1. Permits are required for all proposed development in the Floodplain Overlay District:

The Town of Nahant 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.

2. 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.

SECTION 10.2 – DELINEATIONS

A. The Floodplain District is herein established as an overlay district. The District includes all special flood hazard areas within the Town of Nahant designated as Zone AE, AO, and 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 Nahant are panel numbers 25009C0529G, 25009C0533G, 25009C0537G, 25009C0541G and 25009C0542G 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 are incorporated herein by reference and are on file with the Town Clerk. AG approved 09/2014

~~B. Notwithstanding the foregoing, certain areas shown on the Map as within or not within the flood plain may be subject to question. In such cases, a Request For Determination of Applicability shall be submitted to the Conservation Commission in accordance with the state Wetlands Protection Regulations.~~

B. Requirement to submit new technical data:

If Nahant acquires data that changes; the base flood elevation in the FEMA mapped Special Flood Hazard Areas, Nahant 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 251 Causeway Street, 8th floor, Boston, MA 02114; and

• NFIP Program Specialist Federal Emergency Management Agency, Region I 99 High Street, 6th Floor, Boston, MA 02110.

SECTION 10.3 – USE REGULATIONS

A. The Flood Plain District shall be considered as overlying all other districts.

1. The flood plain district shall be considered as overlying all other districts.
2. In the Flood Plain District, land and structures thereon may be used in accordance with the provisions of this article for any purpose otherwise allowed under Section 4. Use Regulations, for the underlying district in which such land or structure is situated; providing that said land and structures fully comply with the standards of Paragraph 60.3(e) of the NFIP regulations and as otherwise provided in the Massachusetts State Building Code (780 CMR), The Wetland Protection Act (310 CMR 10.00) and The State Sanitary Code (Title 5).

2.1 Variances to state building code floodplain standards:

The Town of Nahant 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. The Town of Nahant 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.

3. In the Flood Plain District, no new construction of buildings, nor substantial improvements to

or relocation of existing buildings shall be undertaken except as provided in Section 10.4 hereof. *Substantial improvement* means any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the "start of construction" of the improvement. This term includes structures which have incurred "substantial damage", regardless of the actual repair work performed. The term does not, however, include either:

a. Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions or

b. Any alteration of a "historic structure" as listed on the National Register of Historic Places or a state inventory of historic places, provided that the alteration will not preclude the structure's continued designation as a "historic structure".

For the purpose of this definition, "substantial improvements" is considered to occur when the first alteration of any wall, ceiling, floor or other structural part of the building commences, whether or not the alteration affects the external dimensions of the structure.

4. In addition, no dwelling lawfully existing prior to the adoption of these provisions may be

altered or enlarged by the addition of more than 20% of the existing ground coverage, and
no existing structures in the Coastal High Hazard Area designated as **Zone VE** on the Map shall be expanded except as permitted in Section 10.4 hereof.

5. In the Flood Plain District, no dumping, filling or earth transfer shall be permitted or utilized,
except the following:

a. Public rights of way may be filled for the purpose of maintenance or improvement of an existing roadway or right of way.

b. When public buildings and structures belonging to the Town of Nahant are to be improved or rebuilt, fill may be utilized to the extent allowed by the safety standards set by the Federal Emergency Management Agency except in areas designated as Zone VE, where filling is prohibited.

6. The following additional uses are permitted (if allowed in the underlying district):

and constructed and maintained in accordance with the standards of Paragraph

60.3(e) of the NFIP regulations):

a. Outdoor recreation, including play areas, nature study, boating, fishing and golf courses as are otherwise legally permitted.

b. Foot, bicycle and/or horse paths and bridges, provided such uses do not affect the natural flow pattern of any watercourse.

c. Non-commercial signs (as permitted in the residential district).

d. Uses such as farming, gardening, bathing beaches or picnic areas.

e. Boat docks and launching ramps, subject to the approval of state and/or federal agencies, if required. Construction of a public roadway approved by a Town Meeting vote.

f. Wildlife management areas and conservation of water, plants and

wildlife. g. Garages within the "A" zone, as shown on the Map and

driveways

accessory to dwellings.

h. Any repair, construction or improvements to buildings lawfully existing prior to the adoption of these provisions, which repair, reconstruction or improvements do not constitute substantial improvements as defined herein.

7. ~~Man-made alteration of sand dunes with Zones V1-30, VE, and V which would increase potential flood damage are prohibited.~~

Protection of dunes:

Alteration of sand dunes is prohibited when the alteration would increase potential flood damage.

8. All new construction within Zones V1-30, VE, and V must be located landward of the reach of mean high tide.

9. 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.

10. In Zone 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.

11. Within Zone AO on the FIRM, adequate drainage paths must be provided around structures on slopes, to guide floodwaters around and away from proposed structures.

12. Recreational vehicles in A, A1-30, AH, AO, 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.

SECTION 10.4 – DEVELOPMENT REGULATIONS

A. The Floodplain 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:

1. Sections of the Massachusetts State Building Code (780 CMR) which address floodplain and coastal high hazard areas;
2. Wetlands Protection Regulations, Department of Environmental Protection

(DEP) (currently 310 CMR 10.00);

3. Inland Wetlands Restriction, DEP (currently 310 CMR 13.00);

4. Coastal Wetlands Restriction, DEP (currently 310 CMR 12.00);

5. Minimum Requirements for the Subsurface Disposal of Sanitary Sewage, DEP (currently 310 CMR 15, Title 5);

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.

B. Abrogation and greater restriction:

The flood plain management regulations (by-laws) found in this Floodplain Overlay District section shall take precedence over any less restrictive conflicting local laws or codes.

SECTION 10.5 — BOARD OF APPEALS

~~A. In the Flood Plain District, the applicable special permit granting authority may grant a special permit as provided for in Section 9 and in accordance with the minimum standards and reporting requirements of the regulations previously referenced in Section 10.4, for new construction or substantial improvements to a structure to be erected on a lot of one half acre or less in size, contiguous to FEMA and surrounded on all sides by lots with existing structures constructed below 11 feet above mean sea level subject to the following:~~

- ~~1. There shall be a showing of good and sufficient cause and there shall be a determination by the special permit granting authority that failure to grant the permit would result in exceptional financial or other hardship to the applicant.~~
- ~~2. There shall be a determination by the special permit granting authority that the issuance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.~~
- ~~3. There shall be a determination by the special permit granting authority that the relief granted shall be the minimum necessary (to afford relief).~~

~~4. The special permit granting authority must notify the applicant in writing that the issuance of a permit to locate a structure at an elevation below the base flood elevation as shown on the Map will result in increased actuarial rates for flood insurance coverage.~~

~~B. The Town shall include, within its Annual Report submitted to the Federal Emergency Management Agency, the number of permits issued hereunder, and shall maintain a record on file in the office of the Board of Selectmen of all permits granted, including justification for their issuance.~~

~~C. The granting of a special permit hereunder shall not affect or grant relief from the provisions of this zoning bylaw relating to the underlying district in which the land lies, nor shall it constitute any representation, warranty or guarantee through the issuance of the permit that flooding and flood damage will not occur at the permitted property.~~

SECTION 10.5 – VARIANCES

A variance from these flood plain bylaws must meet the requirements set out by State law, and may only be granted if:

- 1) Good and sufficient cause and exceptional non-financial hardship exist;
- 2) the variance will not result in additional threats to public safety, extraordinary public expense, or fraud or victimization of the public; and
- 3) the variance is the minimum action necessary to afford relief.

SECTION 10.6 – NEW SUBDIVISIONS AND DEVELOPMENTS

In addition to all other requirements provided by law, the State Building Code, and these regulations relative to structures and uses in areas of special flood hazard, the Planning Board shall review all proposed subdivision and all new construction within flood hazard areas and no such division or construction shall be approved unless the Planning Board shall determine full compliance with the following. All subdivision proposals must be designed to assure that:

1. Such proposals minimize flood damage;
2. All public utilities and facilities are located and constructed to minimize or eliminate flood damage; and
3. Adequate drainage is provided to reduce exposure to flood hazards.

SECTION 10.7 – WETLANDS PROTECTION

A. In addition to the requirements set forth herein, all development subject to federal, state and local wetlands protection regulations shall obtain the necessary approvals of the Nahant Conservation Commissions, the Massachusetts Department of Environmental Protection, the U.S. Army Corps of Engineers, or applicable agencies.

SECTION 10.8 – DISCLAIMER OF LIABILITY

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

End