

BUILDING CODE
SECTION

AN ORDINANCE FOR SPECIAL PROVISIONS FOR FLOOD PLAIN AREAS PERTAINING TO THE REQUIREMENT OF BUILDING PERMITS AND THE RESTRICTION OF USES, ACTIVITIES AND DEVELOPMENT WITHIN THE IDENTIFIED FLOODPLAIN AREAS IN BERWICK TOWNSHIP AND PROVIDING FOR PENALTIES FOR ANY PERSONS WHO FAIL OR REFUSE TO COMPLY WITH THE REQUIREMENTS OF THIS ORDINANCE.

BE IT ENACTED and ORDAINED by BERWICK TOWNSHIP, ADAMS COUNTY, PENNSYLVANIA, and it is hereby enacted and ordained by the authority of same as follows:

ARTICLE I GENERAL PROVISIONS

Section 1.00 Intent

The intent of this Ordinance is to:

- A. Promote the general health, welfare, and safety of the community.
- B. Encourage the utilization of appropriate construction practices in order to prevent or minimize flood damage
- C. Minimize danger to public health by protecting water supply and natural drainage.
- D. Reduce financial burdens imposed on the community, its governmental units, and its residents, by preventing excessive development in areas subject to flooding.
- E. Regulating uses, activities, and development which acting alone or in combination with other existing or future uses, activities, and development will cause increases in flood heights, velocities and frequencies.

Section 1.01 Applicability

The provisions of this section shall apply to all new construction and/or any remodeling under the terms of the Building Code and to any development under the subdivision ordinance within any identified Floodplain area.

Section 1.02 Abrogation and Greater Restrictions

This Ordinance supersedes any other conflicting provisions which may be in effect in identified floodplain areas. However, any other ordinance provisions shall remain in full force and effect to the extent that those provisions are more restrictive.

Section 1.03 Severability

If any section, subsection, paragraph, sentence, clause, or phrase or this Ordinance shall be declared invalid for any reason whatsoever, such decision shall not affect the remaining portions of this Ordinance, which shall remain in full force and effect, and for this purpose the provisions of this Ordinance are hereby declared to be severable.

Section 1.04 Warning and Disclaimer of Liability

The degree of flood protection sought by the provisions of this Ordinance is considered reasonable for regulatory purposes and is based on acceptable engineering methods of study. Larger floods may occur. Flood heights may be increased by man-made or natural causes, such as ice jams and bridge openings restricted by debris. This ordinance does not imply that areas outside any identified floodplain area, or that land uses permitted within such areas will be free from flooding or flood damages.

This Ordinance shall not create liability on the part of Berwick Township or any officer or employee thereof for any flood damages that result from reliance on this Ordinance or any administrative decision lawfully made thereunder.

ARTICLE II ADMINISTRATION

Section 2.00 Building Permits Required

- A. It shall be unlawful for any person, partnership, business, or corporation to undertake, or cause to be undertaken, any construction or development anywhere within the Borough unless a Building Permit has been obtained from the building Permit Officer.
- B. A Building Permit shall not be required for minor repairs to existing buildings or structures.

Section 2.01 Issuance of Building Permit

- A. The Building Permit Officer shall issue a Building Permit only after it has been determined that the proposed work to be undertaken will be in conformance with the requirements of this and all other applicable codes and ordinances.
- B. Prior to the issuance of any building permit, the Building Permit Officer shall review the application for permit to determine if all other necessary governmental permits required by State and Federal laws have been obtained, such as those required by the Pennsylvania Sewage Facilities Act (Act 1966-537, as amended); the Dam Safety and Encroachments Act (1978-325, as amended); the U.S. Clean Water Act, Section 404,33, U.S.C. 1334; and the Pennsylvania Clean Streams Act (Act 1937-394, as amended). No permit shall be issued until this determination has been made.
- C. No encroachment, alteration, or improvement of any kind shall be made to any watercourse until all adjacent municipalities which may be affected by such action have been notified by the municipality and until all required permits or approvals have been first obtained from the Department of Environmental Resources, Bureau of Dams and Waterway Management.

In addition, the Federal Insurance Administrator and Pennsylvania Department of Community Affairs, Bureau of Community Planning, shall be notified by the municipality prior to any alteration or relocation of any watercourse.

Section 2.02 Application Procedures and Requirements

- A. All applications for building permits shall be made in the manner previously set forth in this Chapter.
- B. All building permit applications shall be reviewed by the permit officer for the location of any of the proposed development, construction or remodeling partially within or adjacent to any identified floodplain area.
- C. If said permit officer determines that any of the proposed development or construction activity is located within or partially within any identified floodplain area, a building permit shall be issued only upon the granting of a variance by Berwick Township.
- D. Should a request for a variance be made, applicants for building permits shall in addition to the information required upon application under earlier sections of this chapter, provide the following specific information:

1. A plan of the entire site, drawn at a scale of one (1) inch being equal to one-hundred (100) feet or less, showing the following:
 - a. North arrow, scale, and date;
 - b. A location map showing the vicinity in which the proposed activity or development is to be located within the municipality;
 - c. Topography based upon the National Geodetic Vertical Datum of 1929 showing existing and proposed contours at intervals of two (2) feet.
 - d. All property and lot lines including dimensions, and the size of the site expressed in acres or square feet;
 - e. The location of all existing streets, drives, and other accessways with information concerning widths, pavement types, and construction, and elevations.
 - f. The location of any existing bodies of water or watercourses, buildings, structures and other public or private facilities, and any other natural or man-made features affecting or affected by, the proposed activity or development;
 - g. The location of the identified floodplain area boundary line, floodway line if available, information and spot elevations concerning the one hundred (100) year flood elevations, and information concerning the flow of water including direction and velocities;
 - h. A general plan of the entire site accurately showing the location of all proposed buildings, structures, and any other improvements, including the location of any existing or proposed subdivision and land development in order to assure that:
 - i) All such proposals are consistent with the need to minimize flood damage;
 - ii) All utilities and facilities, such as sewer, gas, electrical and water systems are located and constructed to minimize or eliminate flood damage; and

- iii) Adequate drainage is provided so as to reduce exposure to flood hazards.

Section 2.03 Review by County Conservation District

A copy of all plans and applications for any proposed construction or development in any identified floodplain area to be considered for approval shall be submitted by the Building Permit Officer to the County Conservation District for review and comment prior to the issuance of a building permit. The recommendations of the Conservation District shall be considered by the Building Permit Officer for possible incorporation into the proposed plan.

Section 2.04 Review of Application by Others

A copy of all plans and applications for any proposed construction or development in any identified floodplain area to be considered for approval may be substituted by the Building Permit Officer to any other appropriate agencies and/or individuals (e.g. planning commission, municipal engineer, etc.) for review and comment.

Section 2.05 Changes

After the issuance of a building permit by the Building Permit Officer, no changes of any kind shall be made to the application, permit, or any of the plans, specifications or other documents submitted with the application without the written consent or approval of the Building Permit Officer. Requests for any such change shall be in writing, and shall be submitted by the applicant to the Building Permit Officer for consideration.

Section 2.06 Placards

In addition to the building permit, the Building Permit Officer shall issue a placard which shall be displayed on the premises during the time construction is in progress. This placard shall show the number of the building permit, the date of its issuance and be signed by the Building Permit Officer.

Section 2.07 Start of Construction

Work on the proposed construction and/or development shall begin within six (6) months and shall be completed within twelve (12) months after the date of issuance of the building permit or the permit shall expire unless a time extension is granted in writing, by the Building Permit Officer. Construction and/or development shall be considered to have started with the preparation of land, land clearing, grading, filling, excavation for

basement, footings, piers, or foundations, erection of temporary forms, the installation of piling under proposed subsurface footings, or the installation of sewer, gas and water pipes, or electrical or other service lines from the street.

Time extensions shall be granted only if a written request is submitted by the applicant, which sets forth sufficient and reasonable cause for the Building Permit Officer to approve such a request.

Section 2.08 Inspection and Revocation

- A. During the construction period, the Building Permit Officer or other authorized official shall inspect the premises to determine that the work is progressing in compliance with the information provided on the permit application and with all applicable Berwick Township laws and ordinances. He shall make as many inspections during and upon completion of the work as are necessary.
- B. In the discharge of his duties, the Building Permit Officer shall have the authority to enter any building, structure, premises or development in the identified floodplain area, upon presentation of proper credentials, at any reasonable hour to enforce the provisions of this ordinance.
- C. In the event the Building Permit Officer discovers that the work does not comply with the permit application or any applicable laws and ordinances, or that there has been a false statement or misrepresentation by any applicant, the Building Permit Officer shall revoke the building permit and report such fact to the Supervisors of Berwick Township for whatever action it considers necessary.
- D. A record of all such inspections and violations of this ordinance shall be maintained.

Section 2.09 Fees

Applications for a building permit shall be accompanied by an appropriate fee, payable to Berwick Township, based upon the estimated cost of the proposed construction of development as determined by the Building Permit Officer. A fee schedule shall be established by resolution of the Board of Supervisors and shall be attached to this Ordinance.

Section 2.10 Enforcement

A. Notices

Whenever the Building Permit Officer or other authorized municipal representatives determines that there are reasonable grounds to believe that there has been a violation of any provisions of this Ordinance, or of any regulation adopted pursuant thereto, the Building Permit Officer shall give notice of such alleged violation as hereinafter provided. Such notice shall (a) be in writing; (b) include a statement of the reasons for its issuance; (c) allow a reasonable time not to exceed a period of thirty (30) days for the performance of any act it requires; (d) be served upon the property owner or his agent as the case may require; provided, however, that such notice or order shall be deemed to have been properly served upon such owner or agent when a copy thereof has been served with such notice by any other method authorized or required by the laws of this State; (e) contain an outline of remedial action which, if taken, will effect compliance with the provisions of this Ordinance.

B. Penalties

Any person who fails to comply with any and all of the requirements or provisions of this Ordinance or who fails or refuses to comply with any notice, order or direction of the Building Permit Officer or any other authorized employee of the municipality shall be guilty of an offense and, upon conviction, shall pay a fine to the Berwick Township of not less than Twenty-five (\$25.00) Dollars or more than Three Hundred (\$300.00) Dollars plus costs of prosecution. In default of such payment, such person shall be imprisoned in county prison for a period not to exceed ten (10) days. Each day during which any violation of this Ordinance continues shall constitute a separate offense. In addition to the above penalties, all other actions are hereby reserved including an action in equity for the proper enforcement of this Ordinance. The imposition of a fine or penalty for any violation of, or non-compliance with, this Ordinance shall not excuse the violation or non-compliance or permit it to continue; and all such persons shall be required to correct or remedy such violations and non-compliances within a reasonable time. Any development initiated or any structure or building constructed, reconstructed, enlarged, altered, or relocated, in non-compliance with this Ordinance may be declared by Berwick Township to be a public nuisance and abatable as such.

Section 2.11 Appeals

- A. Any person aggrieved by any action or decision of the Building Permit Officer involving the administration or the provisions of this Ordinance may appeal to the Board of Supervisors of Berwick Township. Such appeal must be filed, in writing, within thirty (30) days after the decision or action of the Building Permit Officer.
- B. Upon receipt of such appeal the Board of Supervisors shall set a time and place, within not less than ten (10) nor more than thirty (30) days, for the purpose of considering the appeal. Notice of the time and place at which the appeal will be considered shall be given to all parties.
- C. Any person aggrieved by any decision of the Board of Supervisors may seek relief therefrom by appeal to court, as provided by the laws of this Commonwealth including the Pennsylvania Flood Plain Management Act.

ARTICLE III IDENTIFICATION OF FLOODPLAIN AREAS

Section 3.00 Designation of Floodplain Areas

For the purposes of this Ordinance, the areas considered to be floodplain within Berwick Township shall be those areas identified as being subject to the one-hundred (100) year flood in the Flood Insurance Study prepared for Berwick Township by the Federal Insurance Administration dated November 4, 1981.

A map showing all areas considered to be subject to the one-hundred (100) year flood is available for inspection at the Berwick Township offices. For the purposes of this Ordinance, the following nomenclature is used in referring to the various kinds of floodplain areas:

FW (Floodway Area) - the areas identified as "Floodway" in the Flood Insurance Study prepared by the FIA.

FF (Flood-Fringe Area) - the areas identified as "Floodway Fringe" in the Flood Insurance Study prepared by the FIA.

FA (General Floodplain Area) - the areas identified as "Approximate 100 year Floodplain" in the Flood Insurance Study prepared by the FIA.

- A. The FW (Floodway Area) is delineated for purposes of this Ordinance using the criteria that a certain area within the floodplain must be capable of carrying the waters of the one-hundred (100) year flood without increasing the water surface elevation of that flood more than one (1) foot at any point. The areas included in this area are specifically defined in the Floodway Data Table contained in the above-referenced Flood Insurance Study and Shown on the accompanying Flood Boundary and Floodway Map.
- B. The FF (Flood-Fringe Area) shall be that area of the 100 year floodplain not included in the Floodway. The basis for the outermost boundary of this District shall be the one-hundred (100) year flood elevations contained in the flood profiles of the above-referenced Flood Insurance Study and as shown on the accompanying Flood Boundary and Floodway Map.
- C. The FA (General Floodplain Area) shall be that floodplain area for which no detailed flood profiles or elevations are provided. Such areas are shown on the maps accompanying the Flood Insurance Study prepared by the FIA. In determining the necessary elevations for the purposes of this Ordinance, other sources of data may be used such as:
 1. Corps of Engineers - Floodplain Information Reports
 2. U.S. Geological Survey - Flood-prone Quadrangles
 3. U.S.D.A., Soil Conservation Service - County Soil Surveys (Alluvial Soils) or P.L. 566 Flood Information
 4. Pennsylvania Department of Environmental Resources - Flood Control Investigations
 5. Known Highwater Marks from Past Floods
 6. Other sources

Section 3.01 Changes in Floodplain Area Delineations

The areas considered to be floodplain may be revised or modified by the Board of Supervisors of Berwick Township where studies or information provided by a qualified agency or person documents the need or possibility for such revision.

No modification or revision of any floodplain area identified in the Flood Insurance Study prepared by the Federal Insurance Administration shall be made without prior approval from the Federal Insurance Administration.

Section 3.02 Disputes

Should a dispute arise concerning the identification of any floodplain area, an initial determination shall be made by the Planning Commission and any party aggrieved by such decision appeal to the Board of Supervisors of Berwick Township. The burden of proof shall be on the appellant.

ARTICLE IV TECHNICAL PROVISIONS

Section 4.0 FW (Floodway Area) and FF (Floodway-Fringe Area) Provisions

- A. No encroachment, alteration, or improvement of any kind shall be made to any watercourse until all adjacent municipalities which may be affected by such action have been notified by the municipality, and until all required permits or approvals have been first obtained from the Department of Environmental Resources, Bureau of Dams and Waterway Management.

In addition, the Federal Insurance Administrator and Pennsylvania Department of Community Affairs, Bureau of Community Planning, shall be notified prior to any alteration or relocation of any watercourse.

- B. Any new construction, development, uses or activities allowed within any identified floodplain area, shall be undertaken in strict compliance with the provisions contained in this Ordinance and any other applicable codes, ordinances and regulations.
- C. Within any FW (Floodway Area) and FF (Floodway-Fringe Area) no new construction, development, use, activity, or encroachment of any kind, shall be permitted.

ARTICLE V EXISTING STRUCTURES IN IDENTIFIED FLOODPLAIN AREAS

Section 5.00 General

Structures existing in any identified floodplain area prior to the enactment of this Ordinance may continue subject to the following provisions:

- A. No expansion or enlargement of an existing structure shall be allowed within any identified floodway that would cause any increase in flood heights.

- B. Any modification, alteration, reconstruction, or improvement of any kind to an existing structure, to an extent or amount of fifty (50) percent or more of its market value shall constitute a substantial improvement and shall not be permitted.
- C. Any modification, alteration, reconstruction, or improvement of any kind to an existing structure, to an extent or amount of less than fifty (50) percent of its market value, shall be elevated and/or floodproofed to the greatest extent possible.

ARTICLE VI VARIANCES

Section 6.00 General

If compliance with any of the requirements of this Ordinance would result in an exceptional hardship for a prospective builder, developer, or landowner, the Board of Supervisors of Berwick Township may, upon request, grant relief from the strict application of the requirements.

Section 6.01 Variance Procedures and Requirements

Requests for variances shall be considered by the Board of Supervisors of Berwick Township in accordance with the following:

- A. No variance shall be granted for any construction, development, use or activity within any floodway area that would cause any increase in the one-hundred (100) year flood elevation.
- B. No variance shall be granted for any activities regulated under the Pennsylvania Flood Plain Management Act (Act 1978-166) and the Floodplain Management Regulations adopted pursuant to Act 1978-166. Specifically, these activities appear in Section 38.6 Regulation of Particular Obstructions and Section 38.7 Development Which May Endanger Human Life respectively of the Floodplain Management Regulations.
- C. If granted, a variance shall involve only the least modification necessary to provide relief.
- D. In granting any variance, the Supervisors of Berwick Township shall attach whatever reasonable conditions and safeguards it considers necessary in order to protect the public health, safety, and welfare, and to achieve the objectives of this Ordinance.

- E. Whenever a variance is granted, the Board of Supervisors of Berwick Township shall notify the applicant in writing that:
 - a. The granting of the variance may result in increased premium rates for flood insurance.
 - b. Such variances may increase the risks to life and property.
- F. In reviewing any request for a variance, the Board of Supervisors of Berwick Township shall consider, but not be limited to, the following:
 - a. That there is good and sufficient cause.
 - b. That failure to grant the variance would result in exceptional hardship to the applicant.
 - c. That the granting of the variance will (i) neither result in an unacceptable or prohibited increase in flood heights, additional threats to public safety, or extra-ordinary public expenses; (ii) nor create nuisances, cause fraud on, or victimize the public, or conflict with any other applicable State statute or regulation, or local ordinance or regulation.
- G. A complete record of all variance requests and related actions shall be maintained by the Berwick Township. In addition, a report of all variances granted during the year shall be included in the annual report to the Federal Insurance Administration.

Notwithstanding any of the above, however, all structures shall be designed and constructed so as to have the capability of resisting the one hundred (100) year flood in accordance with the provisions of the Corps of Engineers publication entitled Flood-Proofing Regulations, EP-11652314, June 1972. In addition, the Federal National Flood Insurance Program Regulations (Section 60.3d) must be satisfied at the minimum.

ARTICLE VII DEFINITIONS

Section 7.00 General

Unless specifically defined below, words and phrases used in this Ordinance shall be interpreted so as to give this Ordinance its most reasonable application.

Section 7.01 Specific Definitions

- A. Accessory use or structure - a use or structure on the same lot with, and of a nature customarily incidental and subordinate to, the principal use or structure.
- B. Building - a combination of materials to form a permanent structure having walls and a roof. Included shall be all mobile homes and trailers to be used for human habitation.
- C. Completely dry space - a space which will remain totally dry during flooding; the structure is designed and constructed to prevent the passage of water and water vapor.
- D. Construction - the construction, reconstruction, renovation, repair, extension, expansion, alteration, or relocation of a building or structure, including the placement of mobile homes.
- E. Development - any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, the placement of mobile homes, streets, and other paving, utilities, filling, grading, excavation, mining, dredging, or drilling operations and the subdivision of land.
- F. Essentially dry space - a space which will remain dry during flooding, except for the passage of some water vapor or minor seepage; the structure is substantially impermeable to the passage of water.
- G. Flood - a temporary inundation of normally dry land areas.
- H. Floodplain - a relatively flat or low land area which is subject to partial or complete inundation from an adjoining or nearby stream, river or watercourse; and/or any area subject to the unusual and rapid accumulation of surface waters from any source.
- I. Floodproofing - means any combination of structural and non-structural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures, and their contents.
- J. Identified floodplain area - the floodplain area specifically identified in this Ordinance as being inundated by the one-hundred (100) year flood. Included would be areas identified as Floodway (FW), Flood-Fringe (FF).

- K. Land development - (i) the improvement of one lot, or two or more contiguous lots, tracts, or parcels of land for any purpose involving (a) a group of two or more buildings, of (b) the division or allocation of land or space between or among two or more existing or prospective occupants by means of, or for the purpose of streets, common areas, leaseholds, condominiums, buildings groups or other features; (ii) a subdivision of land.
- L. Minor repair - the replacement of existing work with equivalent materials for the purpose of its routine maintenance and upkeep, but not including the cutting away of any wall, partition or portion thereof, the removal or cutting of any structural beam or bearing support, or the removal or change of any required means of egress, or rearrangement of parts of a structure affecting the exitway requirements; nor shall minor repairs include addition to, alteration of, replacement or relocation of any standpipe, water supply, sewer drainage, drain leader, gas, soil, waste, vent or similar piping, electric wiring or mechanical or other work affecting public health or general safety.
- M. Mobile home - means a transportable, single family dwelling intended for permanent occupancy, office, or place of assembly, contained in one or more sections, built on a permanent chassis, which arrives at a site complete and ready for occupancy except for minor and incidental unpacking and assembly operations, and constructed so that it may be used with or without a permanent foundation. The term does not include recreational vehicles or travel trailers.
- N. Mobile home park - a parcel of land under single ownership which has been planned and improved for the placement of two or more mobile homes for non-transient use.
- O. Obstruction - any wall, dam wharf, embankment, levee, dike pile abutment, projection, excavation, channel, rectification, culvert, building, fence, stockpile, refuse, fill, structure, or matter in, along, across, or projecting into any channel, watercourse, or flood-prone area, (i) which may impede, retard, or change the direction of the flow of water either in itself or by catching or collecting debris carried by such water, or (ii) which is placed where the flow of the water might carry the same downstream to the damage of life and property.
- P. One hundred year flood - a flood that, on the average, is likely to occur once every one-hundred (100) years (i.e. that has one (1) percent chance of occurring each year, although the flood may occur in any year).

- Q. Person - An individual, partnership, public or private association or corporation, firm, trust, estate, municipality governmental unit, public utility or any other legal entity whatsoever which is recognized by law as the subject of rights and duties.
- R. Special permit - a special approval which is required for hospitals, nursing homes, jails, and new mobile home parks and subdivisions and substantial improvements to such existing parks, when such development is located in all, or a designated portion of a floodplain.
- S. Structure - anything constructed or erected on the ground or attached to the ground including, but not limited to buildings, sheds, mobile homes, and other similar items.
- T. Subdivision - the division or redivision of a lot, tract, or parcel of land by any means into two or more lots, tracts, parcels, or other division of land, including changes in existing lot lines for the purpose, whether immediate or future, of lease, transfer of ownership, or building, or lot development, provided however, that the division of land for agricultural purposes into parcels of more than ten (10) acres, not involving any new street or easement of access, shall be exempted.

ENACTED AND ORDAINED by the Board of Supervisors of Berwick Township,
Adams County, Pennsylvania, this 25 day of March , 1985.

ATTEST:

Caroline A. Webb
Secretary

TOWNSHIP OF BERWICK, ADAMS
COUNTY, PENNSYLVANIA

Kenneth Sebold
Supervisor

Mayne V. Garrett
Supervisor

Supervisor